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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1985

Addendum

VENEZUELA*

[19 December 1991]

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Article 1

1. The independence and sovereignty of the Republic of Venezuela are proclaimed in the preamble of the Constitution and in the provisions of chapter I which establish the form of the State and government and the basic principle of the system of democracy through suffrage. Although some of the Constitution's provisions were referred to in the Government of Venezuela's initial report (CCPR/C/6/Add.3), it is deemed important to refer to them again, together with other relevant provisions of the Constitution.

2. The aims set out in the preamble to the Constitution include: "maintaining the independence and territorial integrity of the Nation, strengthening its unity, ensuring the freedom, peace and stability of its institutions; protecting and uplifting labour, upholding human dignity, promoting general well-being and social security; achieving the equitable participation of all in the enjoyment of wealth, according to the principles of social justice, and promoting the development of the economy in the service of man; ... cooperating with all other nations, especially with the sister republics of the hemisphere, in the aims of the international community, on the basis of mutual respect for national sovereignty, the self-determination of peoples, the universal guarantee of the individual and social rights of the human person, and the repudiation of war, conquest and economic predominance as instruments of international policy; supporting the democratic order as the sole and irrenounceable means of ensuring the rights and dignity of citizens and favouring their peaceful extension to all the peoples of the earth".

3. The basic provisions of the Constitution also state that: "The Republic of Venezuela is irrevocably and forever free and independent from any domination or protection by a foreign Power" (art. 1); "The Republic of Venezuela is a federal State, within the terms embodied in the Constitution" (art. 2); "The Government of the Republic of Venezuela is and always shall be democratic, responsible and alternating" (art. 3); "Sovereignty resides in the people, who exercise it by means of suffrage, through the organs of government" (art. 4).

4. With regard to the right to economic development, articles 95 and 98 of the Constitution stipulate respectively that the economic system of the Republic shall be based on principles of social justice guaranteeing to all a dignified existence useful to the community, that the State shall accordingly promote economic development and the diversification of production, in order to create new sources of wealth, increase the income level of the population and strengthen the economic sovereignty of the country, and that the State shall protect private initiative without prejudice to its power to enact measures for planning, rationalizing and promoting production and to regulate the circulation, distribution and consumption of wealth, in order to stimulate development.

5. In the area of social development, article 72 of the Constitution establishes the obligation of the State to protect associations, corporate bodies, societies and communities that have as their purpose the better fulfilment of the aims of the individual and of society, and to promote the organization of cooperatives and other institutions devoted to improvement of the economy.

6. Venezuela which, like the other countries of Latin America, attained political independence in the mid-nineteenth century, has recently been striving for economic independence, in accordance with the rights recognized in article 1, paragraph 2, of the Covenant. A development of major importance in this area was the 1975 Iron and Petroleum Nationalization Act. Internationally, Venezuela is engaged in wide-ranging diplomatic activity, within the framework of regional, subregional and developing-country groups, with a view to laying the foundation for a new international economic order and improving economic cooperation among sister countries. In addition, articles 78, 79 and 80 of the Constitution deal respectively with the right to education and the right to devote oneself freely to the arts and sciences, and with the purposes of education, which include the development of the spirit of human solidarity.

7. On the basis of the above-mentioned principles, Venezuela has been committed to the process of decolonization encouraged by the United Nations since its inception and, in particular, since the establishment in 1961 of the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, also known as the United Nations Decolonization Committee, of which Venezuela is a member. Venezuela's policy with regard to decolonization is based on the principles set forth in the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960) which establishes the right of all peoples to self-determination, complete freedom and independence, the exercise of sovereignty and territorial integrity.

8. In accordance with its policy of anti-colonialism and rejection of any form of racism, racial discrimination or apartheid, Venezuela has supported all the resolutions adopted by the United Nations and other international forums condemning the illegal occupation of Namibia by South Africa and the implementation of the policy of apartheid in the territory of Namibia. In May 1967, the United Nations set up the Council for Namibia. Because of the importance of the issue to our country, Venezuela became a member of the Council for Namibia in 1979 and was highly active in administering the United Nations Fund for Namibia. In addition to providing the broadest possible support for the resolutions on decolonization considered by the United Nations General Assembly, Venezuela is a member of the Advisory Committee on the United Nations Educational and Training Programme for Southern Africa and contributes to various funds set up by the United Nations.

Article 2

9. Venezuela accords to every inhabitant of the Republic the civil and political rights recognized in the Covenant, on the basis of the general principle of equality which applies throughout our system. The Venezuelan Constitution itself, in proclaiming the fundamental rights and freedoms, refers to every inhabitant of the Republic as the potential beneficiary of them. We shall explain later how the exercise of certain political rights is reserved for Venezuelan citizens (see arts. 111 and 112 of the Constitution of Venezuela), although it will be seen that, in some areas, this distinction is tending to disappear, as for example in the case of article 111, paragraph 2, of our Constitution. Also in this connection, the Constitution establishes

distinctions with regard to fitness to hold public office, and states that voters standing for election must be able to read and write (see art. 112); however, this distinction is not one of those ruled out by article 2 of the Covenant, since it is based not on economic standing or social status, but on the need for the holder of any public office to be able to perform its functions. We understand the concerns raised by this regulation in the Human Rights Committee. However, Venezuela has made great strides in promoting the literacy of the population and raising its general standard of education, thereby maintaining the "general terms of equality" called for in article 25 (c) of the Covenant in respect of access to public service. 1/

10. In view of the interest in the matter shown by the Committee, it would seem appropriate at this point to mention the developments in the Venezuelan legal system regarding the legal force and degree of precedence accorded to international human rights treaties ratified by Venezuela. The Venezuelan Constitution does not resolve unequivocally the questions of the legal force of the provisions of international treaties under our legal system, or stipulate sufficiently clearly the degree of precedence accorded to them within that system. Article 128 of our Constitution simply states a general rule whereby international treaties concluded by the National Executive shall be approved by a special act. From this it will be seen that, as has been noted by writers on the subject, 2/ where there is a conflict between the provisions of a treaty and legislation enacted prior to the entry into force of the treaty, the legislation would automatically be superseded by a special act incorporating the treaty into internal law on the basis of the derogatory effect of subsequent legislation on earlier conflicting provisions.

11. It is more difficult to determine precedence in the event of conflict between a law enacted subsequent to the act ratifying the treaty and the treaty itself. In this regard, national legal doctrine and case law, in the interest of progressive development, tend towards a special solution of this problem, particularly as far as international human rights treaties are concerned. Although the text of the Constitution has undergone no change in this respect, the decisions of the Supreme Court and national doctrine have, on the basis of article 50 of the Constitution, recognized international human rights treaties ratified by Venezuela as having automatic force of law once the constitutional requirements regarding their approval have been fulfilled (self-executing character), and as being on a legal par with the provisions of the Constitution themselves. 3/

12. Article 50 of the Constitution states:

> "The enunciation of rights and guarantees contained in this Constitution must not be construed as a denial of others which, being inherent in the human person, are not expressly mentioned herein.
>
> The lack of a law regulating these rights does not impair the exercise thereof."

On the basis of this provision, legal doctrine and court decisions have maintained that international human rights treaties ratified by Venezuela acquire constitutional force in our legal system and that their approval in accordance with the procedures laid down in the Constitution signifies

State recognition of them as inherent in the human person, a quality which also derives from the international instruments themselves, since they specifically qualify the human rights which they embody as inherent in the human person.

13. Recent decisions by the Supreme Court have established that international instruments binding on Venezuela in the area of human rights embody rights inherent in the human person which, as such and on the basis of article 50 of the Constitution, can be protected by means of the Venezuelan legal mechanisms for the prompt and effective protection of Constitutional rights. 4/ This judicial precedent, which is lent considerable weight by the fact that it comes from the Supreme Court, is one of the "measures" which States undertake to adopt, in accordance with article 2 of the International Covenant on Civil and Political Rights, in order to give effect to the rights recognized in the Covenant (see annex 1). In response to the concern expressed by the Committee on this point, it should be added that the Supreme Court has also ruled that acts ratifying international treaties cannot be nullified by our courts on grounds of unconstitutionality 5/ (see annex 2).

14. This brings us to developments in the Venezuelan legal system as regards the procedural remedies available to all inhabitants of the Republic for the prompt and effective protection of human rights. As stated in our preceding report (CCPR/C/6/Add.8), article 49 of the Venezuelan Constitution provides for constitutional protection as a prompt and effective remedy for the protection of human rights, in accordance with article 8 of the Universal Declaration of Human Rights and article 2, paragraph 3, of the International Covenant on Civil and Political Rights. In our preceding report we also stated that the act alluded to in article 49 of the Constitution and establishing a specific procedure for constitutional protection had not been promulgated. It was left to the courts to fill this gap by progressing and teleological interpretation of the Constitution. The action taken by the courts led in due course to the adoption of special legislation on constitutional protection. On the basis of the principles established by the jurisprudence, the National Congress adopted on 18 December 1987 the long-awaited Organic Law on the Protection of Constitutional Rights and Guarantees, which was promulgated by the President of the Republic on 22 January 1988, the date of entry into force of the legislation.

15. This new Act was considered by Venezuelan jurists as "the most important act adopted in Venezuela since the 1961 Constitution itself". 6/ It introduces important improvements and innovations for ensuring constitutionality and the protection of human rights. These are briefly as follows:

(a) Legislative development of the constitutional protection provided for in article 49 of the Constitution, expanded significantly to enable this procedural mechanism to be used in any case of violation of human rights, regardless of whether the offending act is perpetrated by individuals or public authorities; also entitles any inhabitant of the Republic, regardless of his nationality or of the legal situation regarding his presence in Venezuela, to invoke the Act;

(b) Lays down the procedure for constitutional protection, which is brief and simple; also establishes flexible rules for determining competence and confers broad powers on the court to ensure execution of the decision;

(c) A special chapter of the legislation is devoted to the habeus corpus rules, which constitute a special type of constitutional protection designed for the protection of two rights in particular, namely, the right to physical freedom and the right to personal integrity; in addition the Act establishes a very expeditious procedure for handling this form of remedy;

(d) Article 3 of the Act incorporates into the Venezuelan system the concept of protection against legislation. This is peculiar to Mexican legal tradition and provides for protection against the effects of a law deemed to conflict with constitutional rights. This form of protection makes it possible to have the application of a law suspended in respect of a given situation when it is deemed unconstitutional for the reason given;

(e) Article 4 of the Act also provides for protection against court decisions;

(f) Finally, the Act enables applications for protection to be lodged in conjunction with a judicial administrative proceeding. If the court rules in favour of the application, the administrative act in question is suspended until a decision is taken to nullify it or other protection measures are adopted.

16. Article 2 states: "An action for protection (amparo) may be brought against any act or omission on the part of organs of the national, State or municipal authorities. It may also be brought in the case of an act or omission on the part of individuals, juridical persons, groups or private organizations having violated, violating or threatening to violate any of the guarantees or rights protected by the Act. A threat shall be considered valid for the purposes of an action for protection if it is imminent."

17. Article 3 provides: "Protection (amparo) proceedings may also be instituted when the violation or threatened violation derive from a rule which conflicts with the Constitution. In such cases, the court hearing the case shall consider the constitutionality of the rule in question and shall inform the Supreme Court of the relevant decision.

> "Amparo proceedings may also be instituted in conjunction with a public action alleging unconstitutionality of laws and other State legislative acts, in which case, the Supreme Court may, if it deems this necessary for the protection of constitutional rights, suspend the application of the provision with respect to the specific legal situation where a violation is alleged, until the action for annulment is completed."

18. Article 4 states: "Amparo proceedings may also be instituted if a Venezuelan court, acting beyond its authority, issues a decision or ruling or orders an act which violates a constitutional right. In such cases, the action for protection must be brought before a court higher than that which issued the ruling, which shall come to a prompt, summary and effective decision."

19. Article 5 states: "Amparo proceedings may be instituted against any administrative act, action, physical violence, or inaction or omission which infringes, or threatens to infringe, a constitutional right or guarantee, where no brief, summary and effective procedure for constitutional protection exists."

> "When proceedings are brought for protection against administrative acts with specific effects or against harmful inaction on the part of the authorities, they may be heard by the competent administrative court, if there is one in the area, in conjunction with judicial administrative proceedings for the annulment of administrative acts or against omissions by the authorities, respectively. In such cases, the court shall, if it considers necessary for the protection of constitutional rights, briefly, summarily, effectively and in accordance with the provisions of article 22, suspend the effects of the act in question as a guarantee of the violated constitutional right, for the duration of the proceedings."

20. Where proceedings are brought for protection against administrative acts in conjunction with judicial administrative proceedings concerning the violation of a constitutional right, the latter proceedings may take place at any time, even after the legal time-limits have elapsed, and the prior exhaustion of administrative remedies shall not be necessary.

21. The entry into force of the Organic Law on Protection has produced a significant increase in the use of this remedy and in the number of court rulings in favour of applications for protection. The institution of constitutional protection may be said to have served on many occasions to protect the rights provided for in the Covenant. A case in point is that of a minor of Colombian nationality who was in Venezuela without official authorization, having entered the country illegally, and was about to be expelled by the frontier police authorities. However, he was able to remain in the country as a result of a protection order issued by a court of the Republic, which considered that, as his relatives had resident status in Venezuela, deporting him would adversely affect his mental and physical development, thereby violating his fundamental rights under the Constitution, which does not discriminate on grounds of nationality (see annex 2). 7/

Articles 3 and 23

22. Venezuela has explicit policies relating to women, their inclusion in development and avoidance of discrimination against them. In line, therefore, with the principles of the Constitution and after extensive efforts to make the country aware of the need to introduce changes in family law so as to eradicate the abuses and inequalities of outdated legislation, the Congress of the Republic adopted a set of Reforms to the Civil Code on 26 July 1982, and, on 27 November 1990, the new Labour Act was passed. It should be noted that before the July 1982 reform of the Civil Code, married women were less favourably treated than married men: decisions relating to conjugal life were taken by the husband, and it was the husband's prerogative to administer the conjugal assets.

23. The Act partially reforming the Civil Code established three areas of equality of rights, which are fundamental in a democratic society. These were:

(a) Equality in law of the spouses: before the reform of the Code, the husband decided on the conjugal domicile and administered the conjugal assets. These matters are now decided jointly by the spouses;

(b) Equality in law of parents with respect to their children: previously the father had parental authority;

(c) Equality of children: prior to the reform, children born outside marriage were considered illegitimate. Now, all children, whether born within or outside marriage, are legitimate and have the same rights of inheritance. This is unquestionably a great advance as over 50 per cent of births in Venezuela occur outside marriage.

24. This joint power of decision is given legal expression in the full equality of both spouses in terms of the rights and duties resulting from marriage. Upon marriage, husband and wife acquire the same rights and assume the same duties (art. 137 of the Civil Code), new rules having been created to replace those which were disadvantageous to women. Equality of authority has now been granted which enables them to act in partnership in matters relating to the family. This is embodied in article 140 which states: "The spouses shall by mutual consent take all the decisions relating to their family life ..." thereby reaffirming the principle of freedom and autonomy of the spouses in their personal relationship.

25. This equality is embodied in the Act in relation to a number of fundamental aspects of family life such as equality of rights in choosing the joint domicile, which the spouses shall decide upon by mutual agreement (art. 140); equality of the parents in exercising parental authority, which "by law devolves upon the father and the mother, who shall exercise it jointly, in the interest of and for the benefit of the children and the family" (art. 261); and equal powers of administration of the common property, through the power granted to each of the spouses to administer "on his or her own behalf, the common property acquired through his or her own industry or by any other legitimate means" (art. 168). This means that the authorization of both parties is required for the disposal either for consideration or gratuitously of any common property of value such as real estate, titles and movables of recognized value, company shares, bonds and stock, business assets and contributions.

26. No other legal discipline is more sensitive to social change than family law and no other more successfully achieves the aim of teaching people the fundamental principles on the basis of which it was conceived. The 1982 Civil Code is more appropriate to a society which, politically, is governed by democratic ideals and which should endeavour to educate its citizens in those concepts. As the family is the primary group unit with which people are familiar, it plays a decisive role in conditioning the personalities of its members through the transmission of its values. The move away from the hierarchical family model established in the 1942 Civil Code, in which one member of the couple, the husband, had all-embracing control of family affairs, and its replacement by a couple each member of which shares the

rights and duties on an equal footing, provides the individual with a focal point from which he receives his first lessons in respect for and protection of individual rights, which will later be reflected naturally in his attitude towards society.

27. As a social institution founded on human needs, such as sexual relationships, procreation, love, understanding and mutual aid and assistance, the family is not governed exclusively by law, but by moral, religious and customary norms as well, so that other forms of support are needed to ensure that it follows the desired path. These concepts are particularly valid in pursuing the ideal of equality between men and women, which cannot be decreed by law but must be built up gradually through modification of social awareness. 8/

28. Within the family the woman has traditionally been subordinate to the man who, outside the family framework, has been responsible for all dealings with society. This subordinate position of women, until recently imposed by law, the general acceptance that the values of self-sacrifice and denial are appropriate for them, the assignment of certain roles such as housewife, wife and mother, and the conditioning they have received as part of their cultural heritage, to assume the so-called laudable characteristics of timidity, passiveness and dependence, all these have made women conformist and dependent, and other measures therefore have become necessary to enhance the effectiveness of legislation as a means of achieving equality.

29. In establishing equality between the spouses in conjugal decision-making, the 1982 Civil Code provided a legal basis to support the new couple, but, as the concept of equality is more a sociological than a legal one, the support of other non-legal instruments was needed in order to make that equality a reality. 9/

30. It is pointed out that, even though the reform of the Penal Code has not yet been approved, the Ministry of Family Affairs and, more specifically, the Department for the Advancement of Women, has implemented the programme entitled "Protection against ill-treatment within the family" which was prepared in 1985 by the National Women's Agency in view of the need to tackle the problem of ill-treatment within the family unit and to try first of all to prevent it through community-based awareness workshops, or failing that, to ensure that it was reported and punished by the competent courts. This programme is being implemented in conjunction with the Office of the Minister of State for the Advancement of Women. Agreements have already been signed with some State agencies, prefectures and/or local authorities which, being closer to the community, have to deal with the problem of ill-treatment.

31. Furthermore, through a programme run jointly by governmental and non-governmental agencies, a national legal assistance network has been established to promote and defend the family, to disseminate information on family questions and to provide free legal aid to women (in situations such as work, ill-treatment, sexual abuse, pregnancy, etc.). In 1990, the Department for the Advancement of Women produced and published a "Directory of the National Legal Assistance Network" which contains information on the bodies and institutions that offer help to women.

32. In 1990, in response to the problem caused by the lack of information on the rights and duties that furnish protection for Venezuelan women, a number of legal pamphlets were published. These provide legal information on women and their rights and on the Convention on the Elimination of All Forms of Discrimination against Women. They name the laws which protect women and the family, and they are distributed through workshops, talks, forums, etc. Since early 1991, the Department for the Advancement of Women has concentrated on expanding its information campaign on women's rights and, in particular, has prepared a series of ten triptychs which contain the same legal information as is provided in the pamphlets but are written in very simple language accompanied by illustrations, and are easy for the most vulnerable sectors of the population to understand. It has also produced a leaflet entitled "Where to go in case of ...", which contains detailed information on the organizations and institutions providing community services of different kinds. These include the local authorities, AVESA, ASOCLIVA, FONDENIMA, the Women's Centre, etc.

33. Another mechanism which has been adopted in order to create awareness of and promote the rights of individuals has been the broadcasting of mini-programmes on television, radio and in the press. Although these programmes are considered to be a step forward, their impact is very slight in view of the sexual and family models promoted by the mass media in their other programmes. However, informal educational programmes are being implemented through training in family education, self-esteem, sex education, family planning and education for family life. These programmes are unfortunately not widespread. Women as a "subject" have not gained much ground among the public and many programmes have only been tried out through the technical and financial assistance provided by such international organizations as UNICEF, UNDP, UNFPA AND UNESCO.

34. The principles of equal treatment and equal opportunity for men and women are enshrined in the new Labour Act. There is no difference as regards remuneration, employment opportunities and promotion. The part of this Act dealing with employment, maternity and family protection provides that:

(a) In no case shall a woman applying for a post be subjected to medical or laboratory examinations for diagnosing pregnancy, and in no case may the employer demand a medical certificate for that purpose;

(b) Women workers who are pregnant shall be exempt from performance of work that can induce a miscarriage or prevent the normal development of the foetus;

(c) Prenatal and postnatal leave shall be of 6 and 12 weeks respectively.

35. During these periods of leave, working women have the right not to have their employment contracts considered as suspended, because maternity is neither an illness nor a situation requiring emergency measures, the breaking of employment relationships or the suspension of their effects. These periods are covered by three special guarantees:

(a) Guaranteed remuneration affording the woman subsistence with dignity and decorum;

(b) The right to regular medical care and subsequent care for her child;

(c) The right to extension of the period of postnatal leave if any complications arise in the delivery, on the understanding that this does not have the effect of suspending her contract of employment, but rather that of extending her protection. Working women also have the right not to be transferred, not only during the period of childbirth as under the previous Act, but for one year thereafter. During this period, however, the woman must continue to work with all due application and in the same normal conditions as are specified in her contract of employment. If she breaches her contract, a process of dismissal comes into effect (art. 31 of the Labour Act).

36. The new Labour Act also contains the following provisions:

(a) Woman workers are guaranteed the right not to be dismissed or transferred, or to have their terms of employment altered;

(b) While they are breastfeeding, mothers are entitled to two breaks of half an hour each to feed the child in the workplace day nursery.

37. The new Act also provides for a maximum of 10 weeks of maternity leave reckoned from the time when a working mother adopts a child less than three years of age. In addition to her employment rights, the adoptive mother will also receive a maintenance allowance for herself and for the child. The new Act also includes the following provisions:

(a) If a working mother does not take all her prenatal leave, either because she has medical authorization for this or because the birth is premature or for any other reason, the unused period is added to the period of postnatal leave. Postnatal leave must be taken.

(b) Any employer having more than 20 female employees, must provide a day nursery where these employees can leave their children during working hours. The nursery must have suitably qualified staff.

38. With regard to the Criminal Code, proposals for reform were submitted to the Congress in 1986. They were drawn up by the Ministry of Family Affairs and the Coordinator of Non-Governmental Organizations for Womens Affairs, with the aim of bringing the legislation into line with the Convention on the Elimination of All Forms of Discrimination Against Women. The proposed reforms were the outcome of a wide-ranging interdisciplinary debate between doctors, psychiatrists, lawyers, psychologists, sociologists, etc. whose efforts were aimed at improving the legislation by establishing justice and equality on the basis of the realities of the position of women. The proposals were basically directed at such aspects as the physical and mental health of women, both of which had been omitted or discounted in our legislation.

39. Article 18 of the existing Criminal Code (1964) provides that women should serve their prison sentences either in special establishments or in ordinary establishments but segregated from the male inmates. They may also work out their sentences by performing community service in public welfare establishments, homes for the elderly and hospitals, under proper security

measures and forbidden to leave the establishment until their sentence has been served. Article 47 provides that any punishment given to a pregnant woman which might endanger her life or the health of her unborn child, should be deferred until six months after the birth, provided that it is a live birth. Article 395 further provides that anyone guilty of seduction, rape or abduction shall be sentenced to pay civil compensation to the victim, unless marriage takes place, if the woman is single or widowed, and in any event of good repute, and any child born as a result will enjoy the same rights as are granted under civil law to legitimate children, provided that the status of the parents so permits; in any event the culprit will be sentenced to maintain the child. Any man found guilty of bigamy (art. 403) shall be ordered to maintain any under-aged children by way of civil compensation and, if the innocent party is unmarried and her good reputation is not questioned, he will be ordered to pay her compensation as well.

40. In spite of all these advances, Venezuelan legislation still contains some discriminatory and inequitable rules, inter alia:

(a) Inequality of punishment for men and women in cases of adultery involving uxoricide on grounds of honour. On 6 August 1971, Sonia Sgambatti Araujo applied for article 43 of the Criminal Code to be nullified because it conflicted with articles 58, 61 and 73 of the Constitution. On 7 August 1972, José Gabriel Sarmiento Nuñez acting in his capacity as Attorney-General of the Republic, gave a favourable opinion. In February 1980, on the proposal of Judge Ezequiel Monsalve Casado, the Supreme Court found in favour of the applicant, and declared article 423 of the Criminal Code null and void because it was contrary to article 1 of the Constitution;

(b) Mitigation in the case of offences committed as a matter of honour;

(c) Mitigation of penalty in the case of a prostitute being the victim of rape;

(d) Maintenance of the good reputation of a woman who has been seduced with a promise of marriage;

(e) Civil compensation for unmarried women or widows victims of the offence of seduction, rape, abduction of bigamy;

(f) Designation of children or descendants as legitimate or illegitimate in crimes of parricide;

(g) In cases of indecency, where compensation for children is concerned, the same discrimination is allowed as under the Civil Code prior to its 1982 reform (reference to children as legitimate or illegitimate).

41. Application has been made for the derogation of articles 396 to 401 of the Criminal Code (adultery), 413 (infanticide on ground of honour) 424 (duel of honour) heading and final part, 436 (abortion on the grounds of honour), 439 abandonment of minors on grounds of honour) and 393 (extenuating circumstances in the case of rape of a prostitute), for the following reasons: with regard to adultery, because it is considered that the present

definition is discriminatory to both men and women, not only as regards the different penalties but also as regards the special position of the husband, the latter being an adulterer only if he keeps a concubine openly and publicly in or outside the home. There is also a social distinction in the offence being prosecutable privately for the married couple but not for concubines. There is a certain absurdity therefore in the present regulations both with regard to the concubine in the home and in the application of animus retorquendi, in establishing that the offence is not punishable if the husband can prove that his wife committed adultery the previous year and vice versa. We sincerely believe that fidelity must be maintained by both persons (man and wife) who have joined together freely, and that fidelity has to do with moral values and not with penalties, nor with protection of the family, because not only is adultery an offence prosecutable privately, but it is punishable only when it is made public and not when it is practised.

42. The rules on infanticide, abortion, abandonment of minors, and duelling for reasons of honour should not, we believe, remain in the Code. They are not based on honour itself or on the idea a person has of himself, but on social honour, on reputation, and on the honour of a name. We consider that there is no valid reason why a woman or her relatives or husband should be allowed to invoke these concepts as extenuating circumstances in the killing of an adult or a child, or eliminating hope of life, which is what convention and prejudice currently allows. These crimes contravene the constitutional rules which prohibit murder and guarantee protection of maternity.

43. The reason for amending article 179 by deleting the words "reconocidamente honesta" is not only because the interpretation of virtue or chastity is very subjective, but also because what should be punishable is the deception of a younger woman, with an offer of marriage. With regard to article 393, the abolition of extentuating circumstances in the case of rape of a prostitute means that the element of force used in the act of sexual intercourse will be punishable rather than the good reputation or otherwise of the woman, which amounts to social discrimination. Articles 395 and 403 are being amended so as to refer only to compensation of the victim rather than of unmarried women or widows. These articles are also being amended to indicate that the children will enjoy all the rights recognized under civil law. Lastly because the Constitution now refers to children and prohibits discrimination between them, article 408 has to be amended by deleting the words "legitimate or illegitimate".

44. The Code of Criminal Procedure has been amended to abolish the prohibition of women acting as guarantors in cases of release on bail and to enable them to be judges, advocates and attorneys, and to enable women and minors who have been ill-treated to testify if they are victims or eye-witnesses of a crime.

45. The Intellectual Property Act of 13 June 1928 has also been reformed. This act prohibited married women from publishing their work without the express consent of their husband, with the medieval sanction that their intellectual work could be withdrawn and burned. In the Copyrights Act of 12 December 1962 which repeals the Intellectual Property Act, article 34 provides that copyright belongs exclusively to whichever spouse is the author or to the beneficiary. In cases of community of property, the spouse holding

the copyright may administer and dispose of the work without being subject to the limitations of article 134 of the Civil Code, that is, he or she may dispose of it gratuitously.

46. Prostitution is not considered to be an offence in Venezuela but the law on venereal diseases does not recognize it as a lawful means of livelihood. The Criminal Code provides for punishment of corruption and enticement into prostitution, particularly of minors, and paragraph 6 of article 20 of the Vagrancy Act states that persons whose personal resources are in any way derived from prostitution shall be considered vagrants even though they may have a profession, occupation or trade or possess property or other income.

47. Any legislation protecting minors must to some extent involve the protection of the mother because she is responsible for the care of her children. In Latin American countries where a large number of children are abandoned, largely through parental irresponsibility, it is the mother who has to face the socio-cultural problem of the minor and she who has to work to feed her children and bear the consequences of being head of household. These facts have influenced the Venezuelan lawmakers and have led them, in the Minor's Act, to establish rules for the protection of women and children dealing, inter alia, with assistance to and protection of pregnant women, mothers and new-born babies, assistance to and protection of nursing mothers and infants and children of school age, pre-school age and post-school age, up to the age of 18, assistance to minors whose position is irregular and assistance to and protection of minors in their work. These activities are the responsibility of the National Institute for Minors.

48. Lastly, it must be pointed out that the commission of Parliament which revised the Constitution has proposed that paragraph 1 of article 37 be amended to extend the status of Venezuelan by naturalization to male aliens married to Venezuelan women.

49. The explanatory memorandum and the text of the bill on equal opportunities for women, at present being considered by the National Congress, is attached at annex 3. For the Committee's further information, the document entitled "La Mujer en Venezuela" (Women in Venezuela), containing statistical data, is also attached at annex 4.

Article 4

50. The rights to which this article of the Covenant refers are dealt with in the Constitution in various articles quoted below:

(a) Article 240:

"The President of the Republic may declare a state of emergency in the event of internal or external conflict or whenever well-founded reasons exist that either of these may occur;"

(b) Article 190:

[...] "The powers and the duties of the President of the Republic are:

6. To declare a state of emergency and order the restriction or suspension of guarantees in those cases provided for in this Constitution;"

(c) Article 241:

"In case of emergency, of disorder that may disturb the peace of the Republic, or of grave circumstances that affect economic or social life, the President of the Republic may restrict or suspend all or some of the constitutional guarantees, with the exception of those proclaimed in article 58 [right to life] and in sections 3 and 7 of article 60." [The right not to be held incommunicado or subjected to torture and the right not to be sentenced to perpetual or infamous punishment, respectively];

(d) Article 242:

"The decree which declares a state of emergency or orders the restriction or suspension of guarantees shall be issued in Council of Ministers and submitted for consideration of the Chambers in joint session or of the Delegated Committee, within ten days after its publication";

(e) Article 243 states that: "The decree of restriction or suspension of guarantees shall be revoked by the National Executive, or by the Chambers in Joint Session, when the reasons which brought it about have ended. Cessation of the state of emergency shall be declared by the President of the Republic in Council of Ministers and with the authorization of the Chambers in joint session or of the Delegated Committee";

(f) Article 244 states that:

"If there are well-founded indications of imminent disturbance of the public order, which do not justify the restriction or suspension of constitutional guarantees, the President of the Republic, in Council of Ministers, may adopt necessary measures to prevent such events from occurring."

"Such measures shall be limited to the detention or confinement of the guilty parties, and must be submitted to the consideration of Congress or of the Delegated Committee within ten days following their adoption. If either body declares them to be unjustified, they shall terminate immediately; if to the contrary, they shall be maintained up to a limit of not more than ninety days. The law shall regulate the exercise of this power".

51. As can be seen, the Constitution of Venezuela makes specific provision for states of emergency and, in article 244, refers to the powers of the Executive in those situations which do not justify the suspension or restriction of guarantees. The Bicaineral Commission of Congress on revision of the Constitution has proposed that the duration of suspension of guarantees should be limited since such a situation constitutes an exceptional measure.

52. On 27 February 1989 a series of events occurred which indicated a disturbance of the public order, in response to a number of situations connected with economic measures which the Government had had to adopt. The fundamental fact which gave rise to the events was the increase in public transport fares by some carriers in violation of agreements concluded between the Government and the transport unions. The disturbance of public order made it necessary to suspend certain constitutional guarantees. In fact, there was an outbreak of public violence which took the form of abductions, ransacking and burning of vehicles, with assaults on and pillaging of commercial and industrial establishments, and attacks against pedestrians, drivers and employees of businesses. It must be recognized that the serious breaches of the peace caused by these events, which, as has been stated, made it necessary to suspend some consitutional guarantees, constituted a real and serious threat to all citizens, who were subjected in some cases to attacks against their life and property by groups of individuals taking violent action. The intervention of the armed forces thus became necessary in order to restore order, since the common good required that the freedom of action of some be sacrificed for the security of all.

53. In this state of affairs, the National Government regretted the excesses that presumably occurred as a result of the action of the security forces of the State. We wish to inform the Committee that in such cases the relevant judicial proceedings were instituted with a view to bringing those responsible to justice. The Office of the Attorney-General of the Republic appointed a number of representatives to initiate the necessary criminal proceedings and to pursue them actively until a definitive and firm judgement was handed down. It should be noted, in this connection, that the directives laid down in the Constitution were followed and that the suspension decree was submitted to the Chambers in joint session for consideration within the prescribed time-limit. Decree No. 49 is dated 28 February 1989 and was published on the same date in Gaceta Oficial, No. 34.168. This Decree suspended the guarantees set out in section 1 (detention procedure), section 2 (prohibition of deprivation of liberty for obligations the non-compliance with which has not been defined by law as a crime or misdemeanour), section 6 (duration of detention) and section 10 (measures of social interest against dangerous individuals) of article 60, and in articles 62 (inviolability of the home), 64 (freedom to travel), 66 (freedom to express one's thoughts), 71 (right to meet with others) and 115 (right to demonstrate).

54. On 9 March 1989, by Decree No. 67, published in Gaceta Oficial, No. 34.175, the guarantees proclaimed in article 60, section 10, and in article 66 of the Constitution were restored throughout the national territory, although some rights remained suspended in accordance with the terms of the Decree, in other words, there was a partial restoration of guarantees. The Congress was duly informed. By Decree No. 98, published on 22 March 1989, the guarantees set out in sections 1, 2 and 6 of article 60 and in articles 62, 64, 71 and 115 of the Constitution were restored, in other words those which had remained suspended by article 2 of Decree No. 67 of 9 March. The Congress of the Republic was informed.

55. It should be noted that the suspension decree was supported by virtually all political parties, which is an indication of the emergency situation that existed in the country and the imperative need to suspend the guarantees. It should also be noted that there was full compliance with the relevant procedures and directives.

56. Pursuant to article 4, paragraph 3, of the Covenant, the Government, through the Ministry of Foreign Affairs, informed the Secretary-General of the United Nations of the suspension and subsequent restoration of the constitutional guarantees in question, and submitted the text of the relevant decrees. Copies of the communications in question and of the text of the decrees are annexed to this report (see annex 5).

Article 5

57. As mentioned in previous reports (CCPR/C/6/Add.3 and CCPR/C/6/Add.8), the International Covenant on Civil and Political Rights was incorporated into Venezuelan law through its adoption as an Act of the Republic and subsequent ratification. As indicated in the present report, the Government of Venezuela does not interpret any provision of the Covenant as implying any right to suspend the rights and guarantees recognized in this international instrument beyond the limits expressly stated in the Covenant.

58. It is considered, furthermore, that Venezuelan legislation provides for appropriate penalties for cases where groups or persons engage in activities or perform acts aimed at nullifying any of the rights recognized in the Covenant.

59. Lastly, it must be pointed out that the spirit and rationale of article 5 of the Covenant are embodied in article 50 of the Constitution to which reference has already been made and which states that the enunciation of rights and guarantees contained in the Constitution must not be construed as a denial of others which, being inherent in the human person, are not expressly mentioned therein.

Article 6

60. As had already been indicated on other occasions, the death penalty has been abolished in Venezuela for all offences since 1864. Consequently, no provision has been made for the imposition of this penalty for the Commission of any type of offence. The present Constitution regards the right to life recognized in article 58 as an individual and inviolable right and states that no law may establish the death penalty nor any authority carry it out.

61. Establishment of the inviolability of the right to life should therefore be understood to mean that no one may for any reason be the subject of violation of this right; consequently, it would be incorrect to claim that the constituent legislator has omitted any detail through which this right could be violated. The Venezuelan Penal Code provides penalties for any person who takes the life of another, with exceptions provided for by law (self-defence or state of necessity).

62. With regard to infant mortality, article 76 of our Constitution refers to health protection for all citizens and states that the authorities shall oversee the maintenance of public health and shall provide the means of prevention and care for those who lack them. Thus all the necessary measures have been taken for large-scale vaccination and health campaigns aimed at all sectors of the population.

63. In the past few years a haemorrhagic dengue epidemic has been successfully combated and prevention campaigns are currently being conducted to inform the population about cholera, an epidemic disease that is doing so much harm to the infant population in many Latin American countries.

64. In Venezuela, political crimes have completely disappeared since the establishment of the democratic regime in 1958. The Constitution permits the association of citizens for lawful ends, in addition to the free development of an individual's personality and freedom to express his thoughts by the spoken word or in writing (arts. 43, 66 and 70 of the Constitution of the Republic). There is also a law, promulgated on 15 December 1964, which regulates the activity and life of political parties, public meetings and demonstrations (See annexes relating to article 21 of the Covenant).

65. Venezuela has implemented the United Nation recommendations contained in Economic and Social Council resolution 1989/65, for the effective prevention and investigation of extra-legal, arbitrary and summary executions.

66. In late February and early March 1989 a number of acts of violence were committed by members of the population following certain economic measures taken by the Government. As a result, certain constitutional guarantees were suspended. These disturbances in the nation resulted in the disappearance of hundreds of persons throughout the territory.

67. This led to intermediate action by all bodies connected with the administration of justice and the Public Prosecutor's Department with a view to establishing legal responsibilities. Thus, it was found that the Southern Public Cemetry in Caracas contained common graves where the bodies of persons who had died during this period were buried and that the morgues of various hospitals, as well as the main morgue of the Criminal Investigation Service's technical unit were filled to capacity, without the necessary formalities having been completed. Consequently, through joint action taken by governmental and non-governmental bodies, Criminal Court no. 10 of First Instance (with responsibility for the safeguarding of public property) of the Judicial Circuit of the Federal District and the State of Miranda approved the exhumation of the bodies, and the subsequent identification and transfer of the remains to their relatives for burial in their own graves.

68. Various proceedings initiated not only at the ordinary criminal level but also at the military criminal level led to the prosecution of military personnel and police officials who, acting in a personal capacity, wrongly interpreting the state of emergency decreed and making abusive use of their powers, had caused the death of Venezuelan and foreign citizens.

69. It is well known that in every country engaged in economic restructuring, as is the case with Venezuela, problems exist at the individual level; it is precisely in this area that the right to life is being regularly and clearly violated. In this connection, the Venezuelan State has promoted the establishment of new security units to counter the action of Criminal elements as is the case of (the measures taken by the police in Sucre (State of Miranda), are an example) and has also encouraged the formation of neighbourhood associations; the latter constitute one of the most effective means of communication between the community and the National Government for the purpose of preventing crime.

70. On 17 June 1990, Venezuela signed the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolishing the death penalty. This instrument is currently under consideration by the National Congress with a view to giving it legislative approval.

71. A copy of a decision of the Supreme Court (Political Administrative Division), dated 10 August 1989, which relates to the right to life and for which the International Covenant on Civil and Political Rights served as a basis is attached (See annex 6).

Article 7

72. The initial report pointed out that the Constitution, in article 60, guarantees liberty and security of person, and in article 60, paragraph 3, prohibits detention incommunicado, torture and subjection to treatment causing physical or moral suffering. In this connection, Venezuela ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 29 July 1991. Furthermore, any violation by a public official of the right to physical integrity is punishable under the terms of article 182 of the Criminal Code.

73. As stipulated in article 4 of the Covenant, the prohibition on torture and ill-treatment cannot be restricted or suspended in a time of public emergency (Constitution, art. 241).

Inquiries into complaints

74. On 24 October 1980 (summary record of the 249th meeting), the Human Rights Committee asked what measures were taken to initiate proceedings in cases of accusations of ill-treatment by the police or security services, whether inquiries were started promptly, and what were the results, if any.

75. In the case of accusations of ill-treatment, the Code of Criminal Procedure establishes, in article 374, a special procedure for the indictment of public officials. This special procedure, known as an information, is preliminary and is intended to determine responsibility for allegedly punishable acts committed by public officials in the performance of their duties or by virtue of their position. Once the procedure has been completed, any appropriate legal complaint can then be made to the relevant judicial body, pursuant to article 98 of the Code of Criminal Procedure. The complaint procedure can be initiated by accusations by private persons, by a representative of the Public Prosecutor's Department, or by written communication in exceptional cases.

76. The competent judicial body must carry out the measures that are requested of it and are to serve as the basis for the complaint or accusation, as appropriate, against a public official. The purpose of these measures is to confirm the occurrence of the act brought to the knowledge or notice of the person, whether a private person, a judge or a representative of the Public Prosecutor's Department. It has to be determined whether the perpetrators of the punishable act is in fact a public official; whether the public official has committed the allegedly punishable act in the performance of his duties or by virtue of his position; whether the public official under investigation still performs his public duties after the punishable act has been committed; and whether any proceedings in connection with the act have been initiated by a judicial authority.

77. After the information has been laid, the finding may be: either (1) that the official in question did participate in the allegedly punishable act; or (2) that the acts ascribed to the official are not criminal in character.

78. In the first of those situations, the representatives of the Public Prosecutor's Department must promptly make a written complaint containing the particulars required under article 92 of the Code of Criminal Procedure. The complaint signifies a proposal to initiate criminal proceedings and inquiries are conducted to ascertain the punishable act and to indict the person concerned, as required under article 101 *in fine* of the Code. After the complaint is received, the court must initiate the preliminary investigations and, in the light of the results and the other documents submitted by the representative of the Public Prosecutor's Department, it may order the official to be arrested if the requirements of article 162 of the Code of Criminal Procedure are met, or may order that the inquiries be closed or left open, as appropriate, in accordance with the terms of articles 206 and 208 of the Code.

79. In the second of the situations mentioned, inasmuch as the acts are not criminal in character or there is no evidence of the official taking part in them, the representative of the Public Prosecutor's Department does not submit a complaint but he must state his reasons, in writing, to the Attorney-General of the Republic. Accordingly, once the information has been laid, it may be seen that an act has been committed but that the suspect is not a public official, in which case the representative of the Public Prosecutor's Department has to lay a complaint with the competent judicial authority in accordance with article 42 (3) of the Public Prosecutor's Department Organization Act. Again, both private persons and public officials may have been involved in the same act, in which case a request must be submitted to the judicial authority to start inquiries through the usual channels against the private individuals; if this has not been done automatically and separately, an information must be laid against the public official.

80. Despite the concern of the Public Prosecutor's Department that proper inquiries be conducted in connection with informations laid, it has been found that some courts do not give the relevant requests all the priority attention called for by article 939 of the Code of Civil Procedure.

81. On 26 September 1990, the Lara State Criminal High Court sentenced Lara State police officers to four years' and six months' imprisonment and to the payment of costs for causing suffering and offending human dignity, under the terms of article 182 of the Criminal Code, and article 43 of the Code of Criminal Procedure (see annex No. 7).

Medical standards

82. Another obstacle in connection with evidence produced in court is the lack of resources and expertise among forensic physicians to determine whether an individual has been subjected to torture that leaves no external traces or signs, as is the case with electric and other shocks causing internal injuries not visible to the naked eye.

Right to compensation

83. The law in Venezuela at present provides for payment of compensation for acts committed by public officials, but none has so far been ordered by the courts; such compensation is paid upon application therefor by the injured party or victim.

84. Obviously, a prohibition on torture is an inalienable right and, therefore, we hope to make good many aspects of the matter in a forthcoming reform of the system of criminal justice.

Article 8

85. Since "slavery" obliterates the personality of the individual, the Criminal Code establishes harsh penalties for anyone who reduces another person to the status of a thing. An offence is committed even if the passive subject gives his consent, since freedom is indispensable and inalienable: it is a part of man's heritage. The active subject may be anybody, as can the passive subject.

86. For the purposes of the criminal law, the way the offence is committed is immaterial. The act is committed once a state of subjection has been created. Previously, legal writers regarded the offence as a kind of theft and it required *abductio*; in other words, the person was taken away to another place. This is not necessary in the new concept of the offence, which consists in reducing the person to slavery, something that can happen without the victim being taken anywhere.

87. When it reached independence, Venezuela was aware of the need to do away with such a pernicious institution. The first measures taken by the Supreme Junta included a prohibition on the slave trade (1810). Simon Bolivar freed his slaves and intended to wage a thorough campaign against the system. In 1819, a formal proposal was submitted to the Angostura Congress for the complete abolition of slavery and the slave trade. In 1821, Greater Colombia adopted the Manumission Act for the gradual abolition of slavery and a further law along those lines was enacted in 1830 by Venezuela, which had already separated from Greater Colombia. However, not until 24 March 1854 did President José Gregorio Monagas issue the Abolition Act and, since that time, the unnatural system of slavery has not existed in Venezuela.

88. At the present time, the Constitution sets out a number of principles and rights as the legal framework for Venezuela's anti-slavery position. The declaration of principles speaks of protection of human dignity and maintenance of social and legal equality, enunciates free development of the personality of the individual (art. 43) and the inviolability of the right to life, liberty and security (arts. 58 and 60), protects the family and establishes the right to education (arts. 73 and 78), the right to work, to a maximum working day and an equitable wage (arts. 84, 86 and 87), thereby establishing a democratic system that repudiates slavery at all times.

89. In addition, the Employment Organizational Act sets out constitutional rights regarding protection of the worker's dignity and clearly lays down the principle that no one can be forced to work against his will (art. 32).

90. The Penal Code stipulates in article 174 that "Anyone who reduces another person to slavery or subjects him to a similar status shall be liable to six to twelve years' rigorous imprisonment ... Anyone involved in the slave trade shall incur the same penalty." Article 48, paragraph 10, states that "The following are liable to indictment in Venezuela and punishment under Venezuelan Criminal Law ...

(10) Venezuelans who, inside or outside the Republic, take part in the slave trade."

91. Venezuela's position in condemning slavery and the slave trade is plain to see; it has been maintained ever since independence and has been part of the Venezuelan legal system since the Abolition Act of 1854.

Forced labour

92. Under article 8, paragraph 3 (c), of the Covenant, work done by inmates at prison institutions is not qualified as forced labour. However, it is in practice, for the prisoner has no option but to do it. It is compulsory by the very nature of the penitentiary system and it helps to rehabilitate the offender and also avoids the dangers of indefinite idleness in prison. Nevertheless, the work is, or should be, done under humanitarian conditions, in keeping with the inmates physical and mental capacities, and it is remunerated.

93. By law, Venezuela ratified the ILO Convention concerning Forced or Compulsory Labour (No. 29) in 1945 and the ILO Convention concerning the Abolition of Forced Labour (No. 105) in 1964.

Vagrancy Act

94. Vagrancy, which is very often accompanied by begging, is not classed as an offence in itself and is therefore, not specifically covered by the Criminal Code.

95. Punishment, as well as preventive measures, lie with the police and administrative authorities, which act in accordance with the terms of the relevant local edicts. Vagrants are sometimes at the "pre-delinquent" stage, and the absence of a stable background, a job and a home make them easy pray for hardened offenders.

96. The term "malefactors", used in the Act, is generally applied to vagrants who have a bad record or repeatedly display aggressiveness to other individuals or to society at large. Both form the subject of security measures, confinement similar to arrest and compulsory work under an active social defence system.

97. The Vagrancy Act specifies:

(a) "Article 4: For correctional or protection purposes in the case of vagrants or malefactors under this Act, the competent authorities shall issue and apply, as stipulated in the following articles, the measures set out below:

...

(c) Custody in a re-education centre;

(e) Custody in a permanent or temporary correctional farming settlement;

(f) Custody in a permanent or temporary work camp."

(b) Article 5: "Correctional measures under (c) and (f) of the preceding article shall apply to vagrants and malefactors for a period of up to five years, as appropriate, in accordance with the provisions of chapter IV of this Act. Other measures under the preceding article shall apply for the period indicated.

If anyone has been subject to one or more of the measures laid down in this article, a further correctional measure shall apply for the maximum period.

When the measures referred to under (c) and (f) of the preceding article do not amount to more than three months, they shall be enforced at the local penal institution if a corresponding settlement has not been created, in accordance with article 8 of this Act."

(c) Article 7: "In the case of persons held at correctional farming settlements, correctional institutions or work camps, the authority concerned may fix remuneration in accordance with the terms of the regulations when the persons have acquired discipline and willingly engage in their work."

(d) Article 8: "For the purposes of due compliance with this Act, the Government shall establish any necessary correctional institutions, correctional farming settlements or work camps, which shall be maintained with contributions from the governments of the States, the Federal District and the Federal Territories, as agreed with the National Executive.

The governments of the States, the Federal District and the Federal Territories and Municipalities may establish correctional institutions and correctional farming settlements or work camps, when they deem it appropriate, but always with the approval of the National Executive."

(e) Article 9: "Persons held at correctional farming settlements shall tend the various crops that can be cultivated in the region and shall, as far as possible, learn the technical side of agriculture. Those who display special aptitude shall be taught trades closely connected with the agro-industry.

In addition, any necessary night schools shall be provided at each correctional settlement for inmates without a primary education."

(f) Article 10: "Correctional institutions shall provide employment in trades and industries for all the inmates, even those who are partly incapacitated.

In any event, such centres shall provide inmates with primary education."

98. The Vagrancy Act, adopted on 23 July 1956, has been challenged on various occasions because it conflicts with such constitutional principles as the right to a defence, the right of the accused to be judged by his peers, due process of law, the right not to be convicted twice for the same offence and the right to appeal against a decision within a reasonable period. Furthermore, the concept of "danger to society" under this Act is so imprecise that it is open to varying interpretations and to the discretion of the administrative authority applying it, for which reason a parliamentary bill is under consideration. In the light of the basic principles of protection and security of the individual and observance of his constitutional rights, the bill seeks a suitable balance for the purposes of the rule of law. The Office of the Attorney-General of the Republic has made application to the Supreme Court for repeal of the Act.

Article 9

Paragraph 1

99. The general principle of liberty is enshrined in article 43 of the Venezuelan Constitution and the right to liberty and security of person is enshrined in its article 60, paragraph 1, which stipulates that personal liberty and safety are inviolable, and that consequently no one may be arrested or detained, unless caught in flagrante delicto, except by virtue of a written order of a duly authorized official, in the circumstances and in accordance with the procedure laid down by law.

100. If a punishable act has been committed, the police authorities may adopt provisional measures, for reasons of necessity or urgency, indispensable to allow the act to be investigated and the guilty parties brought to trial. The law shall fix a brief and peremptory time-limit within which the judicial authorities must be notified of such measures, and shall also establish a period within which the latter shall rule on them, and they shall be considered as having been revoked and rendered inoperative unless they are confirmed within that period.

101. The police authorities responsible for holding a person in custody must bring the suspect before the appropriate court within a maximum of eight days after the date of detention (Code of Criminal Procedure art. 75 - H), together

with any reports they have drawn up on the investigations carried out and any instruments, weapons or items they may have seized, in order for the pre-trial proceedings to be conducted. The court responsible for the examination proceedings must take a decision on the detention within 96 hours, except in serious and complicated cases that require a longer period, which may not exceed eight days, for a decision.

102. Notwithstanding these provisions, in practice the police occasionally detain people without justification when a punishable act has been committed, and even when no such act has been committed, when they detain someone they regard as "suspicious"; such occurrences are typical of the so-called "sweeps" or "preventive social measures".

103. The effectiveness of the general principle of liberty (Constitution, art. 43), and the inviolability of personal liberty on which it lays stress (Constitution, art. 60) are undermined by the interpretation of them by the police, who assume that anyone may be detained for the maximum eight-day period of custody detention, in order to allow investigations into an offence to proceed. The police also believe that they are entitled to detain an individual for the whole period, regardless of whether the circumstances that initially gave grounds for the detention have changed. In the last analysis, there has been a failure to understand that deprivation of liberty is an exceptional measure, and that respect for personal freedom is fundamental for maintenance of the rule of law, which is a requirement for social order. This ultimately leads to the failure of these measures to achieve the desired aim.

104. Under existing legislation, pre-trial detention is exceptional and is justified if there is sufficient evidence to implicate a person in a crime for which he is liable to imprisonment, if there are grounds to believe that the suspect will evade the control of the authorities responsible for the investigation, or if it is feared that he will hamper the investigation by eliminating relevant evidence.

105. It should also be mentioned that in accordance with the provisions of article 60, paragraph 1, of the Constitution, pre-trial detention may be ordered only in cases of "necessity or urgency" and when it is "indispensable".

106. Accordingly, the Public Prosecutor's Department has adopted a number of measures designed to mitigate the detrimental consequences of this legal and institutional situation. In this connection, attention is drawn to the instructions transmitted to the public prosecutors in the various practical situations of this nature that arise, requiring them to examine the records of the various stages of the police investigation and to ensure that any pre-trial detentions are in accordance with the law, and to take steps to terminate any arbitrary detentions. Such detentions frequently occur when crimes that give rise to social unrest are committed and a large number of citizens are detained without any real grounds in the hope of reassuring society, in whose name it is not uncommon for innocent persons to be held in pre-trial detention.

107. The objective of the Public Prosecutor's Department is to reconcile the requirements for ensuring a successful police investigation with the constitutional guarantees to which citizens are entitled. To this end it cooperates with the judicial police authorities during the pre-trial investigations in order to elucidate the facts and to determine any relevant criminal liability (Public Prosecution Department Organization Act, art. 6, paras. 5, 8 and 9).

108. Another important matter that comes within the purview of the Public Prosecutor's Department is the frequent arbitrary detention of citizens by the police under the guise of so-called "holding" or unrecorded detention. 10/ In accordance with the powers vested in it by the Organization Act, the Public Prosecutor's Department is required to "investigate arbitrary detentions and to take steps to end them, ..." (Public Department Organization Act, art. 6, para. 10). The Department encounters a multitude of difficulties in properly carrying out its role; these are part of a greater problem: the inadequacy of the legislation relating to police custody.

109. On a number of occasions the Public Prosecutor's Department has recognized the power of the judicial police's principal and auxiliary bodies to hold persons in custody if they have been caught *in flagrante delicto*, while committing a punishable act, or if custody is essential to allow the act to be investigated and the culprits brought to trial; this conclusion may be drawn from an interpretation of article 60, paragraph 1, of the Constitution. However, in this respect it is our view that the eight-day maximum period of custody laid down by article 75 - H of the Code of Criminal Procedure is not fully in keeping with the spirit of article 60, paragraph 1, of the Constitution, which emphatically states that the period of detention must be "brief and peremptory".

110. The partial reform of the Code of Criminal Procedure in 1964 established this eight-day period after which the suspect must be brought before the court, which in turn has a maximum of eight days to take a decision (warrant of arrest, committal for trial or release).

111. Lastly, it should be mentioned that a bill on the individual right to liberty, containing specific norms guaranteeing the rights contained in articles 9 and 10 of the Covenant, has been submitted to the National Congress (see annex 8).

112. The right not to be deprived of one's liberty, except on such grounds as are established by law, is enshrined in article 60, paragraph 2 of the Constitution: "No one may be deprived of his liberty for failure to comply with an obligation unless non-compliance therewith has been classified as a crime or misdemeanour". This guarantee is also contained in article 1 of the Criminal Code which provides that "No one may be punished for an act that is not classified as a punishable act by the law, nor is he liable to punishment not previously established by law."

113. Under Venezuelan law punishable acts are divided into crimes and misdemeanours. In this connection, the Public Prosecutor's Department ensures compliance with the Covenant by taking such action in relation to the administrative authorities as is incumbent upon it as the guarantor of human rights (see Informe Anual del Fiscal General Vol. II, 1990, pp. 211-212).

114. Venezuelan legislation also establishes safeguards for persons who have been lawfully detained or imprisoned. Article 60, paragraph 6, stipulates that "No one shall remain in detention once a release order has been issued by the competent authorities or after he has served his sentence."

115. The authority to whom the release order is issued must comply with it without questioning its grounds, its justification or legality, as is expressly stipulated in the second part of article 6 of the Organization of Justice Act, pursuant to which those in charge of places of detention are required to release any detainees for whom they receive warrants of release or release orders from the competent judges. This does not apply if the detainee concerned is involved in other proceedings before a different court in respect of which his release has not been ordered.

116. Article 318 of the Code of Criminal Procedure provides as follows:

> "Once a person has been detained, he may be unconditionally released only in the following circumstances:
>
> 1. In the case referred to in article 186, if he has been mistakenly arrested *in flagrante delicto* when the act committed is not punishable or does not carry a prison sentence.
>
> 2. If the arrest warrant has been revoked.
>
> 3. If the accused has been detained under suspicion of having committed a punishable act that carries a prison sentence but the charges laid against him concern acts that do not call for such a penalty.
>
> 4. If the proceedings are halted because the person bringing the charge is found to lack competence to do so, as a result of action on the part of the prosecution or a complaint by the injured party.
>
> In these circumstances the person released is still liable to be rearrested under a new warrant, if the criminal proceedings are reopened.
>
> 5. If the dismissal order, the judicial decision or the stay of proceedings are made final on any grounds other than those set out in paragraph 4."

117. Under article 319 of the Code, "In the circumstances referred to in paragraphs 2 and 5 of the preceding article, the court by whose decision the arrest warrant was revoked or which made the dismissal, the stay or suspension of the proceedings or the acquittal final shall order the detainee's release.

118. Under article 3 of the Committal for Trial and Suspension of Sentences Act, which has been in force since 1 April 1980, "Committal for trial and suspension of sentence shall entail the immediate release of the person detained".

119. Venezuelan legislation also provides for conditional release, which is also known as release from custody on bail, in accordance with article 320 of the Code of Criminal Procedure. Suspects may apply for conditional release during pre-trial proceedings and must undertake not to leave the jurisdiction of the court that granted them conditional release and to report to the authorities designated by the judge whenever required. However, if there are sufficient grounds, the judge may authorize a person who is free on bail to leave the jurisdiction of the court for a period determined by the judge himself (Code of Criminal Procedure, art. 322).

120. Article 60, paragraph 7, of the Constitution provides that "no one may be sentenced to perpetual or infamous punishment. Custodial penalties may not exceed 30 years. Similarly, article 94 of the Penal Code stipulates that "In no case shall a custodial sentence handed down in accordance with the law exceed a period of 30 years".

121. Article 60, paragraph 9, of the Constitution provides that "No one may be forcibly recruited or required to perform military service except as provided by law. In this connection, article 503 of the Penal Code states that "Anyone who without official authorization, recruits or carries out enlistment shall be liable to light imprisonment for up to nine months or a fine of from 50 to 1,000 bolívars."

122. Under article 60, paragraph 10, "Social measures in respect of persons may be taken only under the conditions and in the manner provided by law. Such measures shall in all cases be designed to rehabilitate the person concerned in order to reintegrate them into society."

123. The Vagrancy Act establishes security measures in respect of persons who, in accordance with the Act's criteria, are in danger of becoming offenders. However, the provisions of the Act are not in keeping with the Constitutional principles relating to the right to defence, with the result that this right does not exist in practice.

124. Accordingly, the Presidential Commission for State Reform (COPRE) has recommended that the Vagrancy Act should be revised to provide the legal foundation for a genuine scientific and constructive public security policy. The Commission is in favour of substantial amendments to the Act with a view to producing a genuine law for ensuring public security and the control of dangerous persons. In this connection, the Prosecution Department is currently drafting a bill to replace the Vagrancy Act, which will in due course be submitted to the National Congress in order to guarantee the protection of fundamental rights.

125. A number of bills have been submitted to the Congress to regulate the activities of the police: the Congress currently has before it the Police Organization Bill (see annex 9) which deals with the organization, management and coordination of the police. Under article 6 of the bill, police officers

may not, in the performance of their duties, employ any means unauthorized by law or regulation or which are disproportionate to the act they are intended to prevent or the offence committed.

126. Another bill submitted to the Congress is the Federal Police Bill, which will require police officers to respect the rights inherent in the human person. Under the bill police officers may employ only such methods as are authorized by law and regulation. A bill concerning the professional training of police officers has also been introduced (see annexes 10, 11 and 12), as well as bills concerning bail with security and judicial pardon, (annexes 13 and 14).

Paragraph 2

127. Article 75-D of the Code of Criminal Procedure empowers the judicial police to take a statement from a suspect, subject to the provisions of article 193 of the Code, which specify that the statement must be not made on oath nor under pressure or coercion; moreover all investigating officials must observe this rule.

128. There is no question that when he makes his statement to the Criminal Investigation Service a suspect must enjoy the same legal guarantees and safeguards as when he makes his statement to the examining magistrate, as his statement to the police will have full legal effect should it be ratified before the examining magistrate or, even should it not be so ratified, it may lead to a confession that will unfailingly be used as evidence, whose weight will depend on the personality of its author and the circumstances in which it was made (Code of Criminal Procedure, art. 148).

129. Accordingly, when a suspect makes a statement to the Criminal Investigation Service he is entitled to the following guarantees and safeguards:

(a) The statement must not be made on oath nor obtained through pressure or coercion;

(b) The suspect must be informed of the act which is being investigated and of his right not to take an oath, nor to undergo interrogation in a criminal case against him, or against his ascendant relatives, his relatives up to the fourth degree of consanguinity or the second degree of affinity, or his spouse;

(c) No leading or trick questions may be put;

(d) The suspect may make as many statements as he wishes to the Criminal Investigation Service officials, provided his statements are related to the act under investigation.

130. The only form of detention that may be carried out by the Criminal Investigation Service authorities in the performance of their specific functions is police custody, in accordance with the provisions of articles 183 and 194 of the Code of Criminal Procedure. Officials of the Public Prosecutor's Department are responsible for ensuring that detainees are

informed of their constitutional rights and that they are able to communicate with their lawyers (Public Prosecutor's Department Organization Act, art. 2, para. 1.3). Furthermore, the Criminal Investigation Service authorities are required to allow any person in pre-trial detention to communicate with his lawyer.

131. Article 182 of the Code of Criminal Procedure requires the examining magistrate to order a suspect's detention by means of a detention order that specifies the grounds for the detention and contains:

(a) The name and surname of the suspect and any particulars necessary for his identification;

(b) A brief summary of the factual and legal grounds for the detention order and the provisional classification of the offence.

132. If the accused is at the disposal of the examining court, the court shall issue a warrant of commitment to the official responsible for the appropriate penal institution. The warrant shall set out the following:

(a) The name of the issuing court;

(b) The identity of the person committed;

(c) The classification of the offence as shown on the detention order;

(d) The date of issue and signature of the judge and clerk.

The accused shall be notified of the detention order at the time of its execution or immediately thereafter. These safeguards are also provided for in article 60, paragraphs 1, 3 and 4, of the Constitution.

Paragraph 3

133. As has already been mentioned with reference to paragraph 1 of this article, police authorities holding a person in detention are required to bring him before the appropriate court within eight days of the commencement of detention (Code of Criminal Procedure, art. 75-H), so that the examination proceedings may take place. The examining court must take a decision on pre-trial detention within 96 hours, except in serious and complex cases where a longer period is needed. The period may not, however, exceed eight days.

134. Pre-trial detention is not the rule in the Venezuelan system of criminal justice, because under article 182 of the Code of Criminal Procedure and article 7 of the Committal for Trial and Suspension of Sentences Act the examining court may, instead of ordering pre-trial detention, issue a committal order against the suspect ordering him to appear; in this case the requirements of article 182 of the Code of Criminal Procedure must be met, in addition to the following requirements:

(a) The suspect must not have been previously sentenced to a custodial penalty or correctional measure nor may he have previously been the subject of a committal order, unless he was subsequently given a final acquittal;

(b) The punishable act he is suspected of having committed must carry a maximum prison sentence of five years. In the case of concurrent offences, the offence that carries the longest sentence shall be determining;

(c) The accused shall undertake to comply with the requirements laid down by the probation officer. The court may also release the suspect on bail, as already mentioned in paragraph 99 above; the bail shall not be subject to a tax of any kind (Constitution, art. 60, para. 6).

135. As regards the right of everyone to be brought to trial within a reasonable time or be released, Venezuelan legislation specifies reasonable periods within which a person must be definitively sentenced or acquitted; however, because of delays that may affect trials on account of shortcomings in our judicial system, COPRE has prepared a Judicial Pardon Bill which has been submitted to Congress (see annex 14); this is a step towards mitigating the harmful consequences of prolonged detention without a final judgement.

Paragraph 4

136. Liberty of person is guaranteed by the constitutional remedy of habeas corpus, which is governed by the Organic Law on Amparo (Protection) in respect of constitutional rights and guarantees, article 42 of which provides as follows:

> "The judge shall order, within a period of not more than 96 hours after receipt of the application therefor, the immediate release of the person concerned or the lifting of the restrictions imposed on him, if he finds that the legal formalities for deprivation or restriction of liberty have not been complied with.
>
> If he considers it necessary, the judge may make the order subject to a personal security or prohibition of departure of the person from the country for a period of not more than 30 days."

Paragraph 5

137. The rights recognized in article 9, paragraphs 4 and 5, of the Covenant are embodied in article 68 of the Constitution which provides as follows: "Everyone shall have access to the organs for the administration of justice in order to defend his rights and interests, under the terms and conditions established by law, which shall lay down rules to ensure that persons who lack sufficient resources are able to exercise this right."

138. Article 46 of the Constitution makes public officials and employees personally liable for any breaches or infringements of constitutionally guaranteed rights. Their liability may be criminal, civil or administrative as appropriate, and they may not justify their conduct on the ground that they received from a superior orders that involved non-observance of guaranteed rights.

139. The Criminal Code contains a chapter on civil liability deriving from criminal liability, its scope and consequences (Title XI, arts. 113 to 127). This liability includes the following: restitution, repair of the injury

caused and compensation for damage. Anyone may apply to the competent civil courts for a ruling on civil liability, in conjunction with the criminal action or separately.

140. The functions of the Public Prosecutor's Department include the power to apply for compensation and damages to the judge hearing a case involving a publicly actionable offence, at such time as specified by law. It may exercise this faculty when specifically requested to do so by the injured party, provided the party concerned has limited financial resources.

141. In addition, article 3 of the Constitution establishes the principle of the responsibility of the State, while article 47 provides that Venezuelan citizens and foreigners may claim indemnity from the Republic, the States and municipalities for damage, loss or expropriation attributable to the performance of their public function by lawful authorities.

Article 10

Paragraph 1

142. As indicated in the initial report, article 60, paragraph 3, of the Constitution states: "No one may be held incommunicado or subjected to torture or to other proceedings which cause physical or moral suffering. Any physical or moral attack inflicted on a person subjected to restriction of his liberty is punishable.". Paragraph 7 states: "No one may be sentenced to perpetual or infamous punishment. Punishment involving restriction of liberty may not exceed 30 years.".

143. Furthermore, the Prison System Act and its Regulations (art. 6, para. 2) state: "It is forbidden to subject prisoners to any form of harassment or humiliating treatment, or to use means of coercion which are not permitted by law.". Article 3 of Decree No. 1,126 of 2 September 1975, containing the Regulations for judicial confinement, states that no ill-treatment by word or deed or other measures or acts offending personal dignity may be used as disciplinary measures.

144. Penalties for non-observance of these provisions were established in the 1964 legislative reform of the Criminal Code, in article 182, part 2, which states that suffering, offences to human dignity, harassment, torture or physical or moral abuse committed against detained persons by their wardens or jailers or whoever gives orders to them, in violation of the individual rights recognized in article 60, paragraph 3, of the Constitution, shall be liable to a prison term of three to six years.

145. Regarding the discipline applicable to persons detained under an executory sentence, article 50 of the Prison System Act states that an orderly life for the prisoners and the maintenance of discipline in the institutions are essential elements of the prison system, to which end all prisoners, on entering the institution, must be fully informed of the rules to be observed and the manner in which they must behave, in conformity with the provisions of this Act and its Regulations, and particularly concerning disciplinary offences, penalties, awards, privileges and rights.

146. Article 53 of the same Act establishes the following penalties for disciplinary offences:

(a) Private warning;

(b) Total or partial loss of any statutory benefits, privileges and awards obtained;

(c) Confinement in the inmate's own cell for periods of up to 30 days;

(d) Solitary confinement for up to 15 days, but not totally incommunicado;

(e) Placement in a group of prisoners undergoing harsher treatment;

(f) Transfer to another institution.

147. In this connection, article 54 of the Act provides that the penalties referred to in paragraphs (c) and (d) of the preceding article shall be applied only under the strict daily supervision of the prison doctor, who shall recommend early termination or modification of the measure if the prisoner's health so requires. The procedure for the application of disciplinary sanctions implies that the prisoner must be informed in advance of the offence of which he is accused and that anything he may have to say in his defence must be heard.

148. The police authorities determine the scheduling and duration of visits by the prisoner's relatives and friends. Furthermore, the Prison System Act and Regulations require the administration to provide an opportunity twice a week for prisoners to receive visits from relatives and friends. This rule is fully observed.

Paragraph 2

149. The prison population increased at an annual rate of 4.62 per cent during the period 1959 to 1987. In September 1987, 29,826 persons were in detention including both convicted and accused. Projections of this figure for 1989 placed the prison population at 32,645, and for the year 2000, at approximately 53,652. It is worth noting that the actual figures were lower: in August 1989 the prison population was 28,391. This does not, however, mean that it has been possible to make the prison subsystem more effective.

150. It should also be noted that the number of unconvicted prisoners decreased while that of convicted prisoners increased. Comparing the figures for 1987 and 1989, the prison population in 1987 consisted of 77.7 per cent unconvicted prisoners and 23.3 per cent convicted prisoners; in 1989 the proportion of unconvicted prisoners dropped to 67.66 per cent (18,982 persons) and that of convicted prisoners rose to approximately 32.65 per cent (9,161 persons).

PRISON POPULATION */

Institution	Capacity	Population	Difference	Overcrowding (%)
Catia	600	2 778	2 178	363
Capital	576	1 054	478	82.96
El Paraiso	300	871	571	190
El Junquito	250	409	150	63.60
Metropolitano	660	724	64	9.69
Los Teques	250	506	256	102.40
I.N.O.F.	140	224	84	60
Transfer Centre	40	41	1	2.50
Valencia	1 000	3 459	2 459	245.90
Carabobo	208	634	426	204.80
Aragua	750	810	60	8
San Felipe	100	335	235	235
San Juan	200	642	442	221
P.G.V.	1 200	3 304	2 104	175.33
Occidente	800	2 459	1 659	207.37
Mérida	100	432	332	332
Barinas	300	478	178	59.33
Trujillo	300	488	188	62.66
San Fernando	100	280	180	180
Maracaibo	800	2 252	1 452	181.50
Coro	100	204	104	104
Guanare	200	482	282	141
Barquisimeto	300	569	269	89.66
Oriente	800	1 323	523	65.37
Carúpano	100	191	91	91
Barcelona	800	914	114	14.25
Cumaná	100	414	314	314
Porlamar	80	159	79	98.75
Cdad. Bolívar	300	870	570	190
El Dorado	450	745	295	65.55
Oritupano Reform School	300	6		
Total	12 204	28 057	16 147	132.30

*/ Source: Presidential Commission for State Reform (COPRE) Immediate Reforms of the Prison Sub-system, 1987.

151. The Prison System Act, in force since 8 July 1981, repealed the Act of 21 July 1961. Under article 1 of the new Act, the Executive, through the Ministry of Justice, is responsible for the organization and operation of the prison services set up for the execution of custodial penalties imposed by Venezuelan courts.

152. The rules governing the detention of accused persons are laid down in a different text: the Regulations for Persons in Judicial Custody. As indicated above, security measures are contained in another text, the Vagrancy Act.

153. The Prison System Act makes it compulsory for convicted prisoners to participate in work activities, preferably of an educational nature and purpose. It also provides for compulsory primary level instruction "... for inmates not educated to that level". For remand prisoners, however, these activities are not compulsory.

154. Work and vocational training must be provided for persons awaiting trial, since the Regulations for Persons in Judicial Custody refer to these activities as experts of overall welfare, but not of a compulsory nature.

155. According to the provisions of the Minors' Protection Act, accused juveniles must be held separate from adults. With regard to the speed with which they must be brought for adjudication, the safeguards referred to in the comments on the implementation of article 14 are observed.

Paragraph 3

156. Regarding social measures in respect of persons at risk, which, as indicated above in connection with article 9 of the Covenant, are governed by the Vagrancy and Malefactors Act, the Constitution states that in all cases such measures shall be aimed at the rehabilitation of the subject, i.e. his reintegration into society.

157. Regarding convicted persons, article 2 of the Prison System Act provides that the period of execution of a sentence shall be used to rehabilitate the prisoner and reintegrate him into society through the systems and treatment specified by law.

158. The treatment of convicted prisoners is based on two fundamental principles: the treatment must be individual and it must be carried out progressively. The law thus provides for the prisoner to receive comprehensive assistance from a team of professionals. Regarding progressiveness, there are formulas for the serving of sentences (art. 72 et seq. of the Prison System Act) and certain rewards or special privileges that progressively allow the prisoner greater freedom which facilitate his re-entry into society. Provision is made for work assignments, on an individual or group basis and for the open prison system which enables prisoners to live in Community Treatment Centres under a regime differing from that of closed institutions. Finally, there is conditional release.

159. Furthermore, judges are empowered by the Committal for Trial and Suspension of Sentence Act to grant a conditional suspension of sentence upon fulfilment of the requirements and formalities specified in the Act. The Directorate of Prisons of the Ministry of Justice is responsible for follow-up.

160. COPRE has come out in favour of introducing the following improvements in the Act, and to that end a bill has been introduced in the National Congress:

1. The judge's power to send the case to trial, subject to strict fulfilment of the conditions laid down in the Act, would become compulsory and no longer optional, as it is at present.

2. A special measure would be added to cover those persons who, despite the fact that they have no criminal record, have been repeatedly arrested by the police.

3. The classification of offences entailing the right to stand trial would be expanded.

4. The arrest warrant would immediately be converted into an order to stand trial, when appropriate, with no need for formal execution of the arrest warrant.

5. Execution of the sentence imposed on a person tried would be suspended while technical studies aimed at securing a suspension of the sentence are being carried out.

161. The Penal Code also empowers judges to grant convicted persons internal exile. In the case of persons affected by the security measures provided for in the Vagrancy Act, internal exile is granted by the administrative authority or the Ministry of Justice, and enforcement in both cases is supervised by the highest local civil authority. Finally, the President of the Republic has the power to grant a pardon, governed by the criminal legislation in force, both during the trial and during the serving of the sentence.

162. It has been shown in practice that most persons benefiting from one of these systems of conditional release function adequately under the supervision and guidance of a specialist, without having to be uprooted from their family unit or community and, most importantly, without being in danger of criminal influence in prison, a virtually sure path towards a career in crime.

163. This Act also states, in article 16, "Work shall be compulsory, subject to the conditions and the exceptions provided by law. Its function and purposes shall be primarily educational and in no way punitive, even though it may have been ordered in the framework of coercive measures permitted by law." In this connection, article 17 indicates that the duration of the working day and the measures for protecting prisoners' health and safety shall be governed by the labour legislation. Article 18 states that work shall be equitably remunerated, having regard to the limitations inherent in its primarily educational character, and the productivity and degree of training of the person performing it.

164. Work activities in closed criminal detention centres, as part of the prisoners' regime, are organized jointly by the Directorate of Prisons and the Autonomous Prison Labour Fund Institute. The objectives of the Institute are laid down in article 2 of the Decree-Law governing it, which states:

"Article 2 - The purposes of the Prison Labour Fund are:

1. The organization and promotion of agricultural, industrial and handicraft activities in prisons, jails and correctional institutions for vagrants and offenders for the purpose of education and work therapy.

2. The establishment and administration in such establishments of retail shops for the sale of goods the consumption of which is permitted within those establishments."

165. With regard to education, article 23 of the above-mentioned Act states that the educational activity shall be comprehensive, be accessible to all prisoners and be concerned with instilling healthy criteria of moral judgement and social intercourse as well as the necessary habits of individual and collective hygiene. Primary instruction shall be compulsory for those who have no knowledge of the subjects taught at that level. The instruction given to prisoners shall be extended, where possible, to secondary and technical education.

166. The classification of prisoners, a question with regard to which the Committee expressed much concern when the initial report was presented, in no way constitutes discrimination, since it is aimed at the rehabilitation of prisoners and their reintegration into society.

167. Article 9 of the Prison System Act states:

> "Prisoners shall be classified according to the principles of the scientific disciplines by which prison systems are organized. Account is taken mainly of sex, age, type and category of offence, criminal record, level of education, occupation or function, state of health, personality, and, in general, the nature and duration of the penalty."

168. Article 10 of the Prison System Act states that the purpose of the compulsory classification of prisoners is to establish a criminological diagnosis and determine the appropriate treatment having regard to the prisoner's personality. In addition to classification, the Prison System Act provides in article 12 for detainees to be placed in groups based on the nature of their penalties and the similarity of their diagnoses and treatment. To this end, prisons must have separate sections to make it possible for each group to be provided appropriate treatment.

169. It has been difficult to implement this prisoner classification in practice owing to the large number of prisoners processed, the lack of adequate infrastructure and other factors both inside and outside the prisons. In this connection, on 4 December 1989, by decision 82 published in Gaceta Oficial No. 34.360, the Minister of Justice set up the National Classification Commission, which has as one of its tasks the elaboration of projects designed to relieve the congestion and grouping of the prison population. To achieve these objectives, a data processing unit was installed in each prison for the collection, on a daily basis, of information on the number of prisoners entering and leaving the establishment, those transferred to other establishments, those granted full freedom or who have died and those released on parole. These data are processed by a computerized system.

170. The classification of detainees calls for an adequate prison structure, which Venezuela lacks at present. However, during the course of this year and next year it is planned to build several prison establishments. The Prison System Act provides, in chapter XI, for the creation of special establishments, aimed at grouping different categories of detainees according to their classification, on the basis of criteria such as sex, age, type and category of offence, criminal record and, in particular, the nature and duration of the penalty.

171. With regard to juvenile offenders, the Minors Protection Act provides the judge with sufficient authorization to take measures for the education and reeducation of minors who have committed offences, in the manner he considers most appropriate. This power is mentioned in articles 94, 103, 107 and 120. Article 94 of the Act thus empowers juvenile magistrates to decide in what place (within the family or in the community) the measure ordered should be carried out.

172. The Minors Protection Act establishes the obligation to separate detained minors from adults. This rule is in general observed. In some cases, however, because of the shortage of facilities for minors, there are in certain adult prisons minors who are considered very much at risk and who are on the point of attaining their majority.

173. Article 103 of the Act requires the judge to study the minor and his environment with a view to taking the appropriate measures. It provides as follows:

> "The judge shall determine by observing the minor in open or closed institutions:
>
> 1. The personality of the minor.
>
> 2. The family and social factors.
>
> 3. The nature of his conduct and the relevant circumstances.
>
> In certain cases, however, the judge may order that a study be made of some of these aspects."

174. Article 107 states that the judge may order the most appropriate measure once he has become acquainted with the personality of the minor, his family and social situation and the nature of his conduct:

> "The juvenile magistrate may dictate the following measures:
>
> 1. Placing of the minor in the care of his parents, custodians, guardians or responsible relatives.
>
> 2. Supervision.
>
> 3. Placement in a family.
>
> 4. Attendance at a rehabilitation centre.
>
> 5. Attendance at a centre for treatment.

175. Lastly, article 120 indicates the institutions that are to be responsible for the rehabilitation of minors, as well as the training to be given to both the minor and his family and the supervision to be exercised over the minor in this situation:

> "The rehabilitation centres shall operate in appropriate premises, with the necessary installations and facilities, and be staffed by selected and qualified personnel.
>
> Education, vocational training and recreation shall be compulsory in juvenile centres. The rehabilitation centres must also pay attention to the minor's family group, maintaining and strengthening family ties and preparing the home so that it will be able to receive the minor when he leaves the centre. The National Minors Institute shall organize a follow-up system for minors who leave the centres or facilities."

176. In this connection it should be noted that both the Penal Code and the Minors Protection Act authorize the judge, when dealing with the very delicate problem of the situation of minors, to take the measures which he considers appropriate in each case. The need is also recognized to individualize the measure to be taken in each particular case, due consideration being given to the specific characteristics of each young person.

177. In the articles quoted below, the Minors Protection Act regulates the aforementioned applicable measures:

(a) Article 108 - Supervision involves placing the minor in the care of his parents, legal representatives or guardians with the obligation for the latter to comply with the directives and supervision of a person appointed by the National Minors Institute or the Juvenile Court;

(b) Article 109 - A branch of the Supervision Service of the National Minors Institute shall operate at the seat of each juvenile court as far as possible and according to the importance of the particular jurisdiction;

(c) Article 110 - The supervision officers shall be selected preferably from among social workers, educators and other persons with knowledge, experience and training in the field of rehabilitation of minors. Nevertheless, whenever the National Minors Institute or the Juvenile Court considers this desirable, they shall designate appropriate voluntary supervision officers who shall, in every case, be subject to the instructions of the National Minors Institute;

(d) Article 111 - Placement in a family presupposes that the minor will be placed in a home other than that of his parents or custodians with a view to protecting him from material, emotional and moral risks. In addition to juvenile judges, only the National Minors Institute may order placement in a family for minors in an irregular situation;

(e) Article 112 - The duration of the minor's assignment to a family shall be determined by his age and needs, by his relationship with his parents and relatives if they are alive, and by the time required for a definitive settlement of the case;

(f) Article 113 - Minors shall be placed in a family preferably with a view to adoption;

(g) Article 114 - Where the National Minors Institute considers this necessary, it shall provide the substitute home with a monthly allowance sufficient to cover the minor's expenses;

(h) Article 115 - The National Minors Institute shall select and supervise the substitute homes and regulate the functioning of placement with families;

(i) Article 116 - The National Minors Institute shall endeavour to help the parents to overcome the problems, difficulties or situations which justified removing the minor from his home;

(j) Article 117 - The National Minors Institute shall promote the placement of minors in families, whether remunerated or voluntary, through an appropriate system of promotion, incentives and selection of substitute homes;

(k) Article 118 - Attendance at rehabilitation centres shall be ordered when the characteristics of the minor's personality and the circumstances of his environment make this necessary. Such attendance shall be in open, semi-closed or closed institutions.

(l) Article 119 - In executing the measures ordered by the judge, every possible effort shall be made to avoid a situation where the facilities are situated far from the place of residence of the minor's relatives; for that purpose, the National Minors Institute shall establish a diversified group of institutions throughout the country;

(m) Article 120 - The rehabilitation centres shall operate in appropriate premises, with the necessary facilities and equipment, and they shall be staffed by selected and trained personnel. Education, vocational training and recreation shall be compulsory in the centres attended by minors. The rehabilitation centres shall also take account of the minor's group, maintaining and strengthening family ties, and preparing the home so that it can, where possible, receive the minor when he leaves the centre. The National Minors Institute shall organize a follow-up system for minors who leave the centres or other facilities;

(n) Article 121 - Minors who have been classified according to age, physical development, previous behaviour and personality diagnosis, shall be placed in institutions which meet their needs for education, security and appropriate treatment;

(o) Article 122 - Attendance at a centre for treatment shall be approved by the court if the minor's physical or psychological health so requires. The medical treatment given to the minor shall be open or closed and shall be continued until he is declared cured or in a position to be reintegrated into society;

(p) Article 123 - The National Minors Institute shall be in charge of the execution of any of these measures and the duration thereof shall depend on the results of the treatment, the judge having discretion in the matter. The National Minors Institute shall inform the juvenile judge every three months of the situation regarding the minor's treatment and may suggest a change in the nature of the measure decided upon. The Institute shall also be able to request the judge to authorize, if such is the case, visits by the minor to his relatives on certain days or his attendance at education or vocational training centres in the community.

178. Article 93 provides in its last paragraph that if during the execution of a rehabilitation measure the minor turns 18 years of age, the juvenile judge may, after consideration of a further technical report, order continuation of the treatment, specifying, in both cases, the period of time during which the minor shall remain in the establishment. This period shall not exceed five years. If the period exceeds two years, the measure shall be the subject of consultation with the competent higher jurisdiction.

179. The Presidential Commission for the Reform of the State (COPRE) has organized study and analysis meetings to develop measures for optimizing the prison system. We propose therefore to draw attention to the main features of the proposed reforms designed to ensure respect for the constitutional provisions guaranteeing the human rights recognized in article 10 of the Covenant.

180. While recognizing the good features of the Venezuelan legislation relating to the prison system, mainly contained in the Prison System Act and the Committal for Trial and Conditional Suspension of Sentences Act, whose implementation calls for adaptation of the system to modern concepts of penology, we must acknowledge the fact that it has still not been possible to eliminate the fundamental problems affecting the system, which are: overcrowding, promiscuity, violence, trafficking in and consumption of drugs, idleness, etc.

181. Furthermore, there have been deficiencies and inadequacy in the criminal law that have hampered progress towards the guarantee of prompt trials, with judgements that are consistent with rapid and modern methods.

182. Venezuelan penal legislation has also established procedures under which prisoners may lodge complaints with the directors of penal establishments which is the normal procedure. In the majority of cases, however, this facility is hampered by the obstacles raised by prison officers and other lower grade officials, which impede access by prisoners to the prison management.

183. Another channel for the submission of complaints is constituted by the prison inspectors working for the Ministry of Justice, which is the organ responsible for the execution of penalties imposed by the courts. The factors mentioned above show the need for strengthening and developing the machinery for submission of complaints to authorities who are independent of the prison administration, such as officials of the Public Prosecutor's Department and the Penal Affairs Committee of the Home Affairs Commission of the National Chamber of Deputies.

184. A further channel for the lodging of complaints are the prison visits which judges are required to make under articles 403 et seq. of the Code of Criminal Procedure, which require that penal establishments be visited by a magistrate once a fortnight. There is, however, only limited application of

this provision as some of them invoke various reasons for not making such visits, 11/ including "the absence of the minimum safety requirements necessary to protect the lives of those making such visits ..."

185. The Code of Criminal Procedure states that the visits to prisons by magistrates have a twofold purpose. They are intended, on the one hand, to facilitate access by remanded and convicted prisoners to the courts, for the purposes of securing any possible modification of their situation, the court being the authority responsible for supervising the execution of preventive detention and the carrying out of the sentences imposed. The Public Prosecutor's Department considers that such visits should be made to persons sentenced by a court and to any other establishment in which prisoners are confined while their case is before a court (art. 404), as well as to establishments for the execution of sentences, for the purpose of verifying that the sentence carried out is the one imposed and not some other penalty (art. 405, sect. 3). It is thus provided that the court which hears the case must supervise the execution of the sentence it imposes.

186. The court is also required to supervise the treatment of prisoners, their welfare, food, activities, safety, hygiene, classification, records, and any complaints against prison officers, prosecuting attorneys or public defenders. This calls for on-the-spot inspections and the ordering of such measures as are deemed necessary for preventing and correcting any deficiencies noted, establishing any responsibility and encouraging the authority to regulate the establishment's organization and facilities.

187. The Public Prosecutor's Department is required by the Constitution to ensure respect for the constitutional rights and safeguards and to see that the laws are properly enforced. It must also ensure that human rights are guaranteed in prisons and other penal establishments (Constitution, art, 220, sect. 4). This provision of the Constitution is fully incorporated and expanded in article 16, section 13, in article 42, sections 15 and 16, and in article 84, section 8, of the Public Prosecutor's Department Organization Act, which empowers officials of the Department to visit penal institutions, on their own initiative and without giving notice, their independence in the exercise of their functions being fully guaranteed.

188. The Prosecutor-General of the Republic ensures correct enforcement of the laws and respect for human rights in prisons and other places of detention, so as to ensure that the custody, a severe measure in itself, is not made even more severe, and to ensure that the penalty imposed by the court will in fact be conducive to the rehabilitation of the prisoner and his reintegration in the society to which he will return. In 1990 there were 16 magistrates responsible for penal matters serving throughout the national territory.

189. The fact that military court officials are not covered by the Public Prosecutor's Department Organization Act does not prevent the Department from exercising supervision over places of custody under military jurisdiction. The Public Prosecutor's Department is empowered to see that human rights and constitutional rights are respected in military detention centres, pursuant to article 220, section 4, of the Constitution and article 6, section 13, of the Public Prosecutor's Department Organization Act, provisions which have been

cited on numerous occasions to the military authorities for the purpose of ensuring that visits are carried out both periodically and without notice, in accordance with the recommendations of the international bodies.

190. As of 6 November 1990, 2,648 cases had been heard by the military tribunals. The number of convicted persons in military detention centres throughout Venezuela in 1990 was as shown below: 12/

NUMBER OF PERSONS DETAINED BY ORDER OF THE MILITARY JURISDICTION, JANUARY TO SEPTEMBER 1990

Detention centre	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.
I.N.O.F.		1	1	1			-	-	-
Occidente		36a/	-	-			-	-	-
Maracaibo		26	26	35			36	51	60
Oriente		90	90	88			89	88	100

Source used: Daily prison population reports provided by the Directorate of Prisons of the Ministry of Justice. The data include only prisoners subject to this jurisdiction.

a/ As from February 1990, the San Cristobal Military Detention Department ceased to be subordinate to the Ministry of Justice, having obtained administrative and organizational autonomy. No further data are therefore contained in the reports of the Ministry of Justice.

Article 11

191. Article 60, paragraph 2, of the Constitution provides that no one may be deprived of his liberty for failure to comply with an obligation unless non-compliance therewith has been classified as a crime or misdemeanour.

192. In Venezuela there is, in principle, no imprisonment for debt or for failure to fulfil contractual obligations, as neither of these are criminal offences. However, there is currently an exception to this rule as persons are sentenced to imprisonment for debt in connection with criminal insolvency proceedings or criminal bankruptcy, or for involvement in various forms of fraud. In all other cases, failure to comply with contractual obligations is dealt with by the civil or commercial courts, as appropriate.

193. It is apparent from the foregoing that Venezuela complies in full with article 11 of the International Covenant on Civil and Political Rights. As regards the legal provisions relating to contracts the following may be cited:

(a) Article 1.167 of the Civil Code: "If one of the parties to a bilateral contract fails to carry out his obligations, the other party may apply to the courts for the enforcement or the annulment of the contract, as well as for damages and compensation if appropriate;"

(b) Article 1,264 of the Civil Code: "Contractual obligations must be complied with in full; debtors are liable for damages and compensation should they fail to do so."

194. As indicated by these articles of the Civil Code, debtors are not liable to prison sentences. The appropriate proceedings come under the Civil Code, which provides for compensation for damages. Creditors make their claim through ordinary proceedings before the civil courts.

Article 12

195. Chapter III of the Constitution, which is concerned with individual rights, provides in article 64 as follows:

> "Everyone may travel freely throughout the national territory, change his domicile or residence, leave and return to the Republic, bring his property into the country or take it out, with no limitations other than those established by law. Venezuelans may enter the country without the need for any authorization. No act of the public authorities may banish Venezuelans from the national territory, except as commutation of some other penalty and at the request of the person sentenced thereto."

In other words, freedom of movement may be restricted only under a suspension of safeguards, as occurred in February 1989 when a state of emergency was declared. The guarantees were restored in March. Venezuela has otherwise complied in full with this requirement.

196. With regard to the commutation of sentence referred to in article 64 of the Constitution, the law provides for two cases in which custodial sentences may be commuted, in the interest of the person sentenced. Under articles, 53, 54, 55 and 56 of the Criminal Code the Supreme Court (Criminal Division) may commute a custodial sentence to banishment, provided three quarters of the sentence have been served.

197. Similarly, in the case of political offences or military offences linked therewith, the Act on the Commutation of Sentences by Pardon or Banishment from the National Territory of 15 December 1964 (Gaceta Oficial No. 27.619) empowers the Executive, upon application by the person sentenced and without any need for a specific proportion of the sentence to have been served, to commute a sentence to be served in a penal establishment into banishment from the national territory for a period equivalent to or shorter than the period remaining to be served.

Article 13

198. At meetings of the Human Rights Committee at which the previous reports submitted by Venezuela were considered it was noted that pursuant to article 47 of the Aliens Act no appeal is permitted against measures adopted in accordance with article 34 of the Act and that there is no justification for the absence of the possibility of appeal against "what could be an arbitrary administrative act against an alien".

199. The following points should be noted in this connection:

(a) Expulsion orders are not made under article 34 of the Aliens Act, as this article concerns deportation. Expulsion is covered by article 35 et seq. of the Act, and article 34 provides as follows:

> "The authorities of the Republic shall adopt such measures as are necessary to prevent entry into the national territory of any undesirable alien, in accordance with article 32, or shall order his immediate deportation if he has already entered, and shall adopt any necessary measures to this effect;"

(b) Article 13 of the Covenant provides that "An alien lawfully in the territory of a State Party ... shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion ...", i.e. an alien has a conditional right of appeal that applies only if he is not being expelled for reasons of security. Accordingly, considerations of security override the right to appeal and if there are no such grounds, the Executive shall authorize the alien or persons designated by him or her to submit the reasons against his or her expulsion to the competent authority. The expulsion order must be in conformity with the Act, but since consideration is given to whether the alien concerned has any resources, as persons may be expelled for arbitrary reasons, it is our view that even prior to Venezuela's acceptance of the Covenant as law, Venezuelan legislation relating to aliens laid down specific grounds for the expulsion of aliens, and moreover the remedy of amparo is still available.

200. With regard to article 13 of the Covenant, applications for amparo concern the remedy of amparo itself and not the substance of the case, i.e. the expulsion itself.

201. The attention of the Human Rights Committee is drawn to the fact that reforms in the area of treatment of aliens have been under consideration for many years.

202. As regards acts that may be regarded as detrimental to the restoration or preservation of peace and which might lead to the expulsion of aliens in circumstances in which constitutional guarantees have been suspended, and about which the Committee has expressed concern, in our view such acts are covered by article 37 of the Aliens Act. In addition the provisions of the Act Regulating the Activities of Aliens on Venezuelan Territory should be borne in mind.

203. With regard to article 37, the Committee has pointed out that an alien may be expelled if he infringes neutrality and has suggested that this is inappropriate as the offence in question is a State matter, rather than an individual offence.

204. In this connection, it is our view that the term neutrality as employed in articles 37 and 28 of the Act is perfectly valid and relates to neutrality in the personal sense, in accordance with the Real Academia dictionary and with Cavanellas' legal dictionary, which gives the following definitions:

> "Neutral: Impartial, indifferent; taking the side of neither of the contestants in or parties to the dispute. A State or Nation which takes no part in a war between other powers or peoples and which, in addition to refraining from warlike acts, assumes the international obligations and rights that correspond to its neutrality."
>
> Neutrality: The impartial attitude of an individual towards an armed conflict. The pacific attitude of a nation *vis-à-vis* the belligerence of two or more parties."

205. It should be noted that the issue of aliens comes within the sphere of State security and is thus beyond the scope of the Organic Law on Administrative Procedures; hence in accordance with article 106 of the Law the remedies provided for therein do not apply. The remedy of *amparo* alone applies, as already mentioned.

Article 106 states that "This Law does not apply to procedures relating to the security and defence of the State".

206. Together with this report we submit the texts of the Aliens Act (*Gaceta Oficial* No. 19.329 of 3 August 1937); the Regulations pertaining to the Aliens Act (*Gaceta Oficial* No. 20.790 of 7 May 1942); the Act Regulating the Activity of Aliens in Venezuelan Territory (*Gaceta Oficial*, No. 20.835 of 29 June 1942) and the Regulations relating to the Admission and Residence of Aliens in Venezuela (*Gaceta Oficial* No. 31.990 of 23 May 1980). See annexes 15, 16, 17 and 18.

Article 14

Paragraph 1

207. The right to equality before the courts and tribunals is established in the Constitution in the following terms:

> "Discrimination based on race, sex, creed or social condition shall not be permitted.
>
> Documents of identification for acts of civil life shall contain no mention of any kind respecting filiation.
>
> No official form of address shall be used other than 'citizen' (*civdadano*) and 'you' (*usted*), except in diplomatic formulas.
>
> Titles of nobility or hereditary distinction shall not be recognized."

208. The exceptions to this principle in criminal matters do not involve the existence of special laws establishing specific exemptions from penalties or providing for lesser penalties for the persons covered by the exceptions in view of the fact that they hold public office. The exceptions make such persons inviolable in certain cases in which their duties require this maximum safeguard, or give them immunity for a certain period, or create special proceedings with greater procedural safeguards for the purpose of judging their conduct by means of which they are not liable to the penalties established by law for any criminal acts they may perpetrate.

209. Immunity is the privilege through which the person to whom this privilege has been granted is temporarily absolved from the consequences arising from the exercise of criminal action, for the period during which such immunity lasts.

210. "Prerogative" is understood to mean the privilege which the law accords to particular individuals and which consists of the granting of procedural safeguards that involve more formalities and proceedings in the criminal trial of the person to whom the prerogative has been granted.

211. The right of every person to a public hearing with due safeguards by a competent and impartial tribunal is established in article 68 of the Constitution, which reads:

> "Everyone may utilize the agencies of the administration of justice in order to protect his rights and interests, under the terms and conditions established by law, which shall fix rules that ensure the exercise of this right by anyone who does not have sufficient means to do so."

In connection with the competence and impartiality of the courts of justice, explanations have already been given in the preceding chapter relating to the judiciary (see annex 19 on the number of cases heard by the various courts of justice in Venezuela). Justice without cost is provided for in title III in the Code of Civil Procedure relating to "The parties and the advocates". In this title, attention may be drawn to article 176, which reads: "The benefit of free justice may be requested by any of the parties at any stage and grade of the proceedings, the implications being recorded separately."

212. The Judicial Power Organization Act provides for the office of Public Counsel for the Defence in criminal matters, the Government Procurator for Juveniles in cases involving minors, and the Government Procurator for Agricultural Matters in cases involving agriculture. In addition, article 69 of the Constitution reads: "No one may be judged except by his regular judges or sentenced to a punishment not established by a pre-existing law".

213. In order to guarantee observance of the rights established in article 14 of the Covenant in connection with the hearing of the defendant, article 226 of the Code of Criminal Procedure expressly states that he shall appear free of all constraint and confinement, in the presence of the representative of the Public Prosecutor's Department, counsel for the defence and counsel for the prosecution, if any. In addition, article 226 regulates matters relating to the public nature of the proceedings when it states:

> "Where, because of the nature of the offence, a public hearing would offend public decency, the court, on its own authority or at the request of the representative of the Public Prosecutor's Department, may order the hearing to be held in camera".

And on the same point, article 24 of the Code of Civil Procedure reads:

> "The acts of the trial shall be public, but proceedings shall be held in camera if the court so decides for reasons of public decency, according to the nature of the case. In these circumstances, neither the

> parties directly concerned nor third parties may publish the acts which have taken place or describe or report them to the public, on pain of a fine of 1,000 to 5,000 bolivares or imprisonment for up to eight days, the said penalties to be imposed by the judge for each offence. The study of written proceedings and applications, the deliberations of the judges for the purpose of passing sentence and the drafting of the judgement shall be effected in private, without prejudice to publication of the sentences they render."

214. Article 15 of the Code states:

> "The judges shall guarantee the right of defence and shall uphold the rights and powers common to the parties without preference or inequality; they shall also uphold each party's various individual rights and powers in the proceedings, in accordance with the provisions of the law, without allowing abuses of any kind."

215. In criminal matters, provisions of the Code of Civil Procedure are applicable by virtue of article 20 of the Code of Criminal Procedure, which reads:

> "The provisions of the present Code shall determine the rules which are to be complied with in criminal procedure; this shall not, however, prevent preferential observance of the rules established on the same subject in special laws, or use of the provisions of the Code of Civil Procedure as a guide to the extent that they are applicable and not at variance with the former provisions in the event of lacunae or doubtful points both in the provisions of the Code of Criminal Procedure and in those of special laws which arise in their observance."

216. Article 17 of the Minors Protection Act establishes the rule of secrecy concerning cases in which minors are involved. Such cases must always be regarded as strictly confidential and private, and their contents may not be divulged in any form, even after the minor comes of age or after his death. Only the minor's parents, guardians, foster parents or their representatives, procurators for juveniles, representatives of the National Children's Institute or persons who, in the opinion of the judge, have demonstrated that they have a legitimate interest in the case may have access to the proceedings and records.

217. The judge or the National Children's Institute may, depending on whether judicial or administrative proceedings are involved, permit access to the proceedings by accredited institutions which undertake research for scientific purposes, provided they observe confidentiality.

Paragraph 2

218. Articles 42 and 43 of the Code of Criminal Procedure require that, for a sentence to be passed, there must be conclusive proof both of the *corpus delicti* and of the guilt of the defendant; consequently, any doubt in such a case must be resolved in favour of the defendant. The *in dubio pro reo* principle, which is of an essentially procedural nature, obliges the judge to acquit the defendant if there are doubts concerning proof of his guilt.

Paragraph 3

219. The Constitution provides that the accused shall have access to the pre-trial safeguards as soon as the relevant detention order is executed (art. 60, para. 1). In addition, article 60, paragraph 5, of the Constitution reads: "No one may be convicted in a criminal trial without first having been personally notified of the charges and having been heard in the manner prescribed by law."

220. Article 226 of the Code of Criminal Procedure states:

> "At the time stipulated in the preceding article, the defendant shall appear in court for a public hearing, free of all constraint and confinement; in the presence of the representative of the Public Prosecutor's Department, counsel for the defence and counsel for the prosecution, if any, the documents referred to in article 218 [list of charges brought by the government attorney of the Public Prosecutor's Department] together with other pertinent texts, shall be read out".

221. The second paragraph of article 60 (5) of the Constitution stipulates: "Persons accused of an offence against the State may be tried in absentia, with the guarantees and in the manner prescribed by law".

222. With respect to the last paragraph of the above-mentioned article, Venezuela entered a reservation when it ratified the Covenant. It should be noted that the law referred to is the Safeguarding the Public Heritage (Organization) Act, which has been in force since 1 April 1983. The purpose of this Act is set out in its first article, which reads:

> "The purpose of the present Act is to prevent, prosecute and punish unlawful enrichment and offences against the State defined herein and to establish the criminal, civil, administrative and disciplinary responsibility of officials and public employees and other persons specified herein".

223. Although this Act provides for proceedings in absentia, it also stipulates, in article 92, that if, 10 days after the issue of the detention order, the suspect has not been arrested, the court shall, ex officio, appoint a provisional defence counsel for him. The defaulter's counsel may exercise all proper remedies against the detention order. Notifications which should be addressed to his client shall be addressed to him.

224. Article 93 of the Act provides that, if the suspect has not been arrested, the court shall declare the pre-trial proceedings closed 30 days after the date on which the detention order becomes final, unless certain formalities remain to be completed.

225. Article 94 states that, on completion of the pre-trial proceedings, the court shall summon the defaulter by means of a notice to be published in a local newspaper and in the Gaceta Oficial of the Republic of Venezuela and to be affixed to the doors of the courthouse and of the Municipal Council of the jurisdiction; the defaulter shall be given 30 continuous days as from the date of publication in which to answer the summons. If he has not answered the

summons in person by the time this limit has expired, a permanent defence counsel shall be appointed for him and the proceedings shall continue their course.

226. Article 17 of the Code of Criminal Procedure states: "Persons who do not know Spanish and are called upon to give evidence shall be assisted by one or more interpreters who, in the absence of official interpreters, shall be selected and sworn by the court before commencing their duties".

227. The last paragraph of article 194, relating to the accused's statement, stipulates:

> "The statement by the accused shall be placed on record without any correction of language, reflecting the actual terms used, and shall be read or be permitted to be read, either for purposes of confirmation or in order that the accused may make such observations as he may deem necessary, which observations shall be entered in the same statement. If he is literate and able to sign his name, he shall append his signature to the foot of the statement; if he is unable to sign, the reason for his not appending his signature shall be specified and his fingerprints shall be attached to the statement".

228. The right of defence is established in article 68 of the Constitution, which states that defence is an inviolable right at every stage and grade of the proceedings. Article 195 of the Code of Criminal Procedure expressly states that, in making his statement during the pre-trial proceedings, the accused shall be assisted by a provisional defence counsel, appointed by him within the 24 hours preceding the statement. Article 209 of the Code provides that, once the statement has been made and in order to initiate the trial, the judge shall serve notice on the defendant, through the clerk of the court, to appoint a defence counsel within 24 hours. The defendant may confirm the provisional appointment made or appoint another counsel or other counsels to represent him in the trial.

229. Both articles contain provisions whereby, if the accused does not appoint a defence counsel, the court shall, ex officio, appoint a "public counsel" to represent him.

230. The purpose of the presence of the provisional defence counsel at the making of the accused's statement is to guarantee this act and to ensure that he advises his client on the best course of action in his defence, since the accused is the first person to speak at this formal proceeding during the pre-trial stage.

231. Once the pre-trial proceedings have been completed, and immediately after the defence counsel or defence counsels have been apointed, they are convened in order that, at the first hearing, they may swear faithfully to fulfil their duties. When the defendant has been provided with a defence counsel, and the case involves the public right of action, both the representative of the Public Prosecutor's Department and the prosecuting counsel, if any, shall in every case present, on the third day following acceptance of the defence counsel, in a formal document the charges brought against the accused, this document being known as the indictment (art. 218). If the case involves a

private action, in which proceedings may be brought only on the application of an injured party (art. 102), the prosecuting counsel explains his complaint or, in other words, the petition on the basis of which he became plaintiff. When the indictment has been presented because there was no abstention from bringing charges or because, even though there was such an abstention, the superior judge decided that charges must be brought, the court sets a time for the third prompt hearing in order to hear the accused in a public and formal proceeding, the accused being summoned to appear if he is not under detention (art. 225).

232. At the hearing of the accused, the latter may request bail when the charges permit such a course in accordance with article 320, first paragraph, of the Code of Criminal Procedure.

233. In accordance with article 202 of the Code of Civil Procedure, time-limits or periods may not be extended or renewed once they have expired, except in the situations expressly determined by law or when a case not imputable to the party requesting extension makes it necessary.

234. Article 251 of the Code reads:

> "Pronouncement of the sentence may be deferred only once, for a serious reason, to which the judge shall expressly refer in the deferral order, and for a period not exceeding 30 days. The sentence pronounced after the period of deferral shall be notified to the parties, failing which the period for lodging appeals shall not run".

And article 19 of the Code stipulates:

> "A judge who refrains from handing down a decision on the pretext of silence, contradiction or deficiency on the part of the law or obscurity or ambiguity of its terms, or who unlawfully delays issuing any order shall be liable to prosecution for denial of justice".

235. On the question of the denial of justice, the Judicial Career Act provides, in article 42 (7), that judges may be cautioned when they are responsible for unjustified delay or negligence in the handling of the proceedings or any formalities embodied in the proceedings. Article 43 (7) and (9) stipulates that judges shall be suspended from office for the following reasons:

> "When they do not observe the judicial time limits and periods to which they are subject in accordance with law or defer judgements without cause",

and

> "When they refrain from handing down a decision on the pretext of silence, contradiction or deficiency on the part of the law or obscurity of its terms, or when they unlawfully delay ordering any measure, action, decision or judgement or issuing any other order, even though the complaint to establish civil liability and the criminal action corresponding to the denial of justice have not been initiated for these reasons".

Article 44 reads:

> "Without prejudice to the criminal penalties to which they may be liable, judges shall be removed from office, inter alia, for the following reason: When they repeatedly fail to observe legal time limits or periods or defer judgements, as provided for in article 43 (7) of this Act".

236. Notwithstanding the provisions and penalties established in our legislation with regard to the denial of justice, and notwithstanding the fact that the Disciplinary Tribunal of the Judicature Council has been imposing penalties in accordance with the Judicial Career Act, our country is in fact not strictly complying with this provision of the Covenant owing to the various problems confronting the Judiciary, which requires a greater number of courts and new court premises since the existing premises are mostly inadequate to cope with the large number of cases initiated daily. For this reason, it is quite impossible to deal with them promptly. Nevertheless, strenuous efforts are being made to solve this problem.

237. Thus, pursuant to the powers conferred on it by law, the Public Prosecutor's Department is endeavouring to ensure promptness in criminal proceedings, requesting judges to observe procedural time limits. The number of cases in which delays have been recorded and handled by government attorneys from the Public Prosecutor's Department has been increasing during the past two years: in 1988, attorneys from the Department called for proceedings to be expedited in 4,454 cases; in 1989 they took similar action in 6,515 cases; and in 1990 in 7,312 cases, an increase of 12.23 per cent over the preceding year (see report of the Attorney-General, 1990, vol. II, pp. 180-181).

238. In addition, the Judicature Council has embarked on the task of upgrading court premises. Thus between 1988 and the time of writing, five new courts have been built in the Federal District, Apure, Barinas, Bolívar (First Judicial Circuit), Nueva Esparta and Carabobo. Six new courts are currently planned in the states of Aragua, Cojedes, Falcón, Mérida, Monagas and Zulia. Five courts are being refurbished in the states of Miranda, Sucre, Táchira, Delta Amacuro and the Federal Territory of Amazonas. And on three new courts in the states of Guárico, Lara and Yaracuy are at the preliminary planning stage.

239. Furnishings, equipment, etc. have been supplied and expenditure on operating costs has been increased. In addition, the salaries of judges and court personnel have been increased to bring them more into line with current reality. The introduction of automation into courts is being planned; it is scheduled to begin in the higher courts towards the end of this year. Equipment has already been purchased for the states of Bolívar and Portuguesa and is in the process of being purchased for the states of Lara and Táchira. Strict compliance with article 41 of the Organization of Justice Act is being demanded. This article reads:

> "The judges have an unfailing duty to hold hearings on at least five days a week. This duty entails their attendance in court for a minimum period of four hours a day. When for a justifiable reason they are

> unable to fulfil the obligation set forth in the first part of this article, they shall duly enter this fact in the Daily Record in each case to justify the fact that no hearing was held."

In this connection, the Judicature Council, by circular S.G. 01940 dated 9 March 1987, established for the civil courts a working day of seven hours, including six hours to be spent in session, with the judge actually present, and one hour to be spent on administrative matters. In the case of the criminal courts, four hours are to be spent on hearings in the presence of the judge, two hours on registry work and one hour on administrative work. All days and hours are to be considered working time for the purposes of the commencement of proceedings.

240. With a view to ensuring collaboration with courts which have a backlog of outstanding cases, article 30 of the Judicial Power Organization Act reads:

> "When in a one-judge court there is an accumulation of more than 20 cases or situations in which the time-limit for furnishing evidence has elapsed, the judge may request from the National Executive, through an organ of the Ministry of Justice (currently the Judicature Council), authorization to convene his alternates in order of election so as to establish Interim Courts, which shall take up and decide the cases or situations in excess of the number indicated ..."

241. Article 15 Q of the Judicature Council Organization Act establishes, among the powers of the Council, that of:

> "... creating temporary or permanent posts of peripatetic judges with national competence to officiate on a temporary or interim basis in the courts to which they are appointed. At present the Judicature Council has a team of 50 peripatetic judges, of a permanent character, who are sent to the various judicial districts in order that, as interim judges, they may hand down decisions in those courts which have a backlog of outstanding cases."

242. As we have thus seen, delays in proceedings are due not only to a shortage of courts, the excessive number of cases initiated every day and the poor facilities of many courts, but also to a large extent to cases attributable to parties who use various devices to slow the course of justice, such as, for example, challenging judges. In many such instances, the lists are exhausted, not only of the titular judges of the competent courts, but also of alternate judges and associate judges. In these cases the Judicature Council is compelled to appoint special judges.

243. Statistical tables received from the Statistical Division of the Judicature Council are appended (see annex 19).

244. As indicated in paragraphs 228 to 232 above, everyone is entitled to be present during his trial and to defend himself or be assisted by defence counsel of his choosing, both during the pretrial proceedings where his statement is taken (art. 195 of the Code of Criminal Procedure) with a provisional defence counsel, and upon completion of those proceedings with the

appointment of a definitive defence counsel (art. 209 of the Code of Criminal Procedure). In both cases, if the accused has not appointed a defence counsel, the court will designate a public counsel for the defence.

245. Article 132, section 1, of the Organic Law on Narcotic and Psychotropic Substances promulgated on 4 July 1984 states that, in order to be valid, the statement made by the detainee or suspect to the principal authorities of the criminal investigation service must be jointly signed by a representative of the Public Prosecutor's Department and the detainee or suspect's chosen lawyer or, in the absence of such a lawyer, a public counsel for the defence.

246. Articles 92 and 94 of the Organic Law on the Protection of Public Property also deal with this question (see paras. 224 and 225 above).

247. The trials in absentia of persons accused of offences against public property, with the guarantees and in the manner prescribed by law, are authorized under article 60, paragraph 5, of the Constitution. The existence in Venezuelan law of this possibility, not covered by the Covenant, prompted the Government of Venezuela to enter a reservation to article 14, paragraph 3 (d), of the Covenant.

248. The State gives effect to the right to defence through the Public Prosecutor's Department and the Public Counsel Service. The Public Prosecutor's Department Organization Act, in article 6, section 14, states that the Department's function is to "supervise the effective observance of the inviolable right to defence throughout criminal proceedings, whether in ordinary or special jurisdiction, from the committal order at all stages and levels of the proceedings". Title VII of the Judicial Power Organization Act which deals with the Public Counsel Service and runs from article 99 to article 103, provides, in order to give effect to this constitutional guarantee, that at the "seat of any criminal court of first instance there shall be at least one public counsel for the defence who must have the same qualifications as an official of the judiciary, and must furthermore be a lawyer or attorney; if, however, there is no professional prepared to accept the post, persons versed in the law may serve provisionally as public counsel".

249. The Judicial Power currently has 145 public counsel officers, and the holders of these positions and their deputies are professional jurists, 113 of them being women and 32 men.

250. Venezuela's Supreme Court has regarded the right to defence recognized by the Covenant as an additional factor to be taken into account in recognizing the jurisdictional character of any act (see the decision of the Supreme Court, Political and Administrative Division, of 28 February 1985, annex No. 20).

251. A Legal Defence Bill is currently making its way through the legislative Chambers; it seeks to provide an answer to the problem of the lack of legal guidance and assistance for the general public, especially the less well-off. The outlines suggested by COPRE for discussion of the bill are:

(a) Creation of a public law entity to coordinate the national legal defence system, with membership to include:

(i) Public Counsel Service Officers;

(ii) Bar associations;

(iii) University legal clinics;

(iv) Arbitration bodies (governors' offices, municipal councils); and

(v) Lawyers' offices;

(b) Introduction of a one-year period of social service for lawyers: any graduating lawyer, in order to practice privately or publicly or to embark on post-graduate studies, would first have to serve on the legal defence network for at least one year;

(c) Establishment of the necessary infrastructure to provide the community with guidance, and with assistance where warranted.

252. Article 5 of the Venezuelan lawyers' Code of Professional Ethics states that a lawyer, as a servant of justice and assistant in its administration, must not forget that the essence of his professional duty is diligently to defend the rights of his client with strict regard for legal rules and moral law.

253. Article 7 of the Code authorizes the lawyer, in defence of justice and truth, to exercise his profession freely and in moderation, subject only to the limits imposed by law and the principles or professional ethics.

254. Article 14 of the Code states that it is the lawyer's duty to agree to defend a person accused of a crime or offence, regardless of his personal opinion as to the guilt of the suspect. Having taken on a case, the lawyer is obliged to use all lawful means to defend it.

255. Article 102 of the Judicial Power Organization Act includes among the powers and duties of public defence counsel the obligation to represent the defendant in the circumstances stipulated in the Code, to defend accused persons whom the courts declare to be poor, and faithfully and diligently to represent the rights of those they are defending.

256. Pursuant to article 170 of the Code of Criminal Procedure, witnesses must be asked for such information as is necessary to clarify their statements, and how they know or came to know the facts which they state; under article 26 of the same Code, similar principles apply in cross-examination.

257. As regards the questioning of witnesses, there is no prohibition or stipulation regarding the form of questioning during cross-examination, thus leaving it free and unrestricted. This discretion must not be abused, however, through admonitions or denial of the freedom to tell the truth; where this occurs the court is required to protect the witness. The witness must make his statements unprompted and may then be asked questions to supplement, clarify or explain particular points, while avoiding distorting his recollection or prompting his answers.

258. The Code of Criminal Procedure makes no distinction between witnesses as regards either questioning or cross-examination, and a witness may thus always be cross-examined by the other party.

259. As mentioned in paragraph 226 above, article 17 of the Code makes it a duty for the judge to swear in one or more interpreters, who may be official or chosen by the court, before commencing work.

260. The right recognized in article 14, paragraph 3 (g), of the Covenant is guaranteed by article 60, section 4, of the Constitution, and article 193 of the Code of Criminal Procedure, which stipulate that in the proceedings where his statement is taken and on every occasion when the accused is to be heard in person, the charges for which he is being tried shall be stated, and that part of the Constitution read out which guarantees that the accused will not be required to take an oath or acknowledge guilt against himself, his spouse or relatives within the fourth degree of consanguinity or the second degree of affinity.

261. This safeguard is also established in article 193 of the Code of Criminal Procedure, which states: "In any of the cases mentioned in the preceding article, and whenever the accused is to be heard in person, the charges shall be stated, and that part of the Constitution shall be read out (art. 60, sect. 4) which guarantees that the accused will not be obliged to take an oath or acknowledge guilt against himself, his spouse or relatives within the fourth degree of consanguinity or the second degree of affinity".

Paragraph 4

262. As regards juvenile persons, the current law is the Minors Protection Act promulgated on 27 November 1980, which superseded the Statute of Minors promulgated on 30 December 1949 and amended on 23 December 1975, and the Breach of Minors' Food Entitlements Act promulgated on 14 August 1959. The latter superseded the provisions on food for minors in chapter II of the Family Protection Act, promulgated on 22 December 1961.

263. The Minors Protection Act is intended to protect the interests of minors and establish their right to live in conditions under which they can attain their normal biological, physical, mental, moral and social development. To this end, the State will provide the means and conditions necessary:

(a) To enable him to enjoy the right to know his parents and, consequently, legally to investigate his paternal filiation, or to be recognized by his progenitors, regardless of their civil status.

(b) To enable him to be duly aided, fed and protected in his health until his full adulthood, in an environment of material and moral welfare, by the persons legally required to do so or, in their absence, by the State.

(c) To ensure that he is not exploited either in his person or in his work and does not suffer moral or corporal ill-treatment.

(d) To enable him to receive a full education that will contribute to the complete development of his personality and to his training as a citizen prepared for life and suited for living in a democratic society. Games, sports and recreation in general shall be basic elements of the education process.

(e) To enable him to be protected by special laws, provisions and courts.

(f) To ensure that he is not regarded as a delinquent and thus does not suffer penalties for any legal offence he may commit but, in such cases, is subjected to re-education procedures, measures and treatment.

(g) To ensure that all judicial, administrative or other procedures and actions connected with minors are free of charge.

(h) To ensure that he is not deprived of his freedom without the legal formalities being duly carried out.

(i) To enable him to be protected within the bosom of his family, from which he shall not be separated except in cases in which this is necessary for his training or his material, psychological or moral welfare.

(j) To ensure that he does not suffer humiliating or discriminatory treatment by reason of the circumstances of his birth.

(k) To enable him to be protected against practices or teachings which might encourage discrimination or religious intolerance."

264. The provisions of the Minors Protection Act apply to all persons under 18 years of age in the territory of the Republic, and their protection extends to the period of gestation (art. 2).

265. Persons under 21 years of age have the benefit of the provisions of chapter II of the Act, both in Venezuela and abroad. The determination of their minor status is made as laid down by ordinary legislation or, where this is not possible, by means of scientific texts ordered by the Juvenile Court (art. 4), and the individual is subject to juvenile jurisdiction while the tests are carried out.

266. The Act is interpreted in the interests of the minor (see the case of the adoption of a minor by parents not domiciled in Venezuela, Informe del fiscal General, vol. II, 1990, pp. 473-478), as laid down by the Act itself and in accordance with the principles universally recognized in juvenile law (art. 5).

267. The regulations pursuant to the Minors Protection Act were published on 11 January 1984 by Presidential Decree No. 2,405, and published in special issue No. 3,320 of the Gaceta Oficial dated 12 November 1984; their purpose is to establish the measures and requirements for protection of the rights of minors set out in the Minors Protection Act, to interpret the Act, and to ensure performance of the duties of the State as the primary tutelary body in the social, intellectual, moral, economic and labour fields.

268. Article 136 of the Act provides that jurisdiction over minors is to be exercised by the higher juvenile courts and the juvenile courts of first instance. Article 137 states that in judicial circuits where there is no juvenile court, cases that belong within the jurisdiction of the juvenile courts must be heard by the respective courts of first instance or, depending on the matter involved and in the event of appeal, by the corresponding higher court, except as otherwise provided by the Act. This last provision notwithstanding, it should be noted that juvenile courts are functioning in all judicial circuits in Venezuela.

269. Book 3, "Minors in irregular situations", defines minors having committed offences as referred to in article 86, as minors who engage in any act punishable under the criminal law or police regulations.

270. Article 102 states that when inquiries have been instituted in the case of minors having committed offences, the juvenile courts must hear the minor and, if possible, his parents or guardians within four days of receiving the documents in the case. Having taken their statements, the court must that same day order such temporary measures in the interests of the minor as it may believe prudent.

271. As another means of protecting the minor, article 99 establishes that a Minors' Attorney must be present at all police pre-trial procedures involving persons under the age of 18.

272. The position of Minors' Attorney is provided for in title II, "The Public Prosecutor's Department", which, in article 148, states that the functions of the Public Prosecutor for minors shall be exercised by Minors' Attorneys or, where there are none, by prosecutors from the Public Prosecutor's Department.

273. Article 149 makes Minors' Attorneys responsible for ensuring the application of the laws for the protection of minors and of any other laws in so far as they affect the interests of the latter, acting in good faith in defence of the rights of the minor and collaborating in the administration of protective justice and with the National Institute for Minors.

274. Minors' Attorneys are thus answerable to the Prosecutor-General of the Republic, who appoints them in accordance with article 13 of the National Institute for Minors Act.

275. The Minors' Protection Act, in volume 3, title IV "Appeals", provides as follows:

(a) "Article 113. In the proceedings referred to in this title, an appeal may have only a single effect. These proceedings are not subject to judicial review. The appeal may be lodged by the parents, the legal representative, the guardians, the National Institute for Minors or the Minors' Attorney. The higher jurisdiction shall give its decision within not more than 10 sitting days."

(b) "Article 134. Once the court's judgement has been pronounced, the parents, the legal representative, the guardian or the Minors' Attorney may at any time make application to the Higher Juvenile Court for review of the measure decided upon. An application for review shall be admissible even if the definitive judgement was given by the higher jurisdiction itself."

Paragraph 5

276. This right is guaranteed in article 50 of the Code of Criminal Procedure, which expressly states that "Any final judgement in first instance may be appealed within five sitting days following notification thereof to the accused, should the latter be in custody, or to his counsel. If he is not in custody, the judgement may be appealed as soon as it is pronounced and the appeal shall be heard for both effects."

277. Article 51 of the above-mentioned Code also states:

> "Whether or not an appeal is lodged, any acquittal or conviction in the first instance shall be the subject of consultation with the higher judicial authority within the same period and in the same circumstances as it may be appealed, as provided in the preceding article."

278. If the penalty imposed consists of a fine or a custodial penalty not exceeding one year, the judgement shall be final and may not be appealed.

Paragraph 6

279. In Venezuela, an enforceable judgement convicting the offender may be reviewed under article 56 of the Code of Criminal Procedure, and both the person convicted or his heirs and the representative of the Public Prosecutor's Office may apply for annulment. Annulment of the conviction shall be declared in the following cases:

(a) If two persons have been convicted for the same offence by two judgements which cannot be reconciled and which are evidence of the innocence of one or other of the convicted persons;

(b) If a criminal conviction has been pronounced on grounds of evidence of the homicide of a person who is fully proved to have been alive subsequent to the time of his alleged death;

(c) If the principle evidence on which the conviction was based is a document which subsequently proved to be a forgery.

280. Article 59 of the Code states:

> "The setting aside of a criminal conviction obtained while the penalty is being served shall terminate the penalty. Application may also be made for annulment of criminal sentences already executed, even where the person sentenced has died. In such a case application must be made for the annulment decision to be communicated to his heirs."

281. Under article 104 of the Criminal Code a pardon may either be a full pardon or call for commutation of the sentence. A full pardon carries with it absolute freedom and terminates the penalty together with all that the penalty entails. A pardon by commutation consists in the transformation of a severe penalty into a milder penalty, with whatever the latter may entail.

282. With regard to the compensation that is due to a person who has incurred a penalty because of a judicial error, the comments made in the analysis of Venezuela's implementation of article 9, paragraph 5, of the Covenant, apply also in this case. The Bicameral Commission has proposed that the title relating to the judiciary should include an article guaranteeing payment of compensation and damages to any person affected by a judicial error or a delay or unjustified omission. Such a person should be able: "... to apply to the State for remedy of the juridical prejudice incurred and payment of compensation and damages, in accordance with the law. The person concerned should retain the right to hold the judge or court and the State liable and to take action against them."

Paragraph 7

283. The right established in this paragraph is guaranteed by the Constitution of Venezuela, article 60, paragraph 8, of which provides: "No one shall be tried for an offence for which he has already been convicted."

284. Under article 228, paragraph 3, of the Code of Criminal Procedure res judicata constitutes a defence on grounds of inadmissibility.

285. As far as civil proceedings are concerned, article 346, paragraph 9, in chapter 3, "Prior issues", of the Code of Civil Procedure considers res judicata a prior issue which the defendant may raise instead of opposing the claim.

286. Finally, attention is drawn to the fact that COPRE has made a thorough study of the draft Code of Criminal Procedure submitted to the Congress of the Republic by the Executive and shares the view that there is an urgent need to reform the existing Code in order to resolve the problems that are causing judicial delays and overcrowding of prisons (see annex 21).

287. The points to be considered in connection with reform of the Code include the following:

1.1. Modification of the use of detention by specifying that it shall be imposed only for those offences for which the custodial penalty exceeds not more than five years.

1.2. Acceptance of the system of release on bail from the start of the trial, except in the case of those offences the nature and method of commission of which are expressly mentioned and where, under special legislation, pre-trial release is not applicable. Also, the judge must ensure the availability to the court of the accused through provision of security for good behaviour, a sworn undertaking or secuity in rem. The security must be commensurate with the type of offence, the character of the accused and his socio-economic circumstances.

1.3. A maximum length for the period of detention should be set (perhaps two years), once it has been decided by the judge, if there has been no conviction within the period fixed for the proceedings. The accused may then be released and a measure restrictive of his freedom shall be decided upon such as will ensure his availability for trial. The period set should be binding and a criminal court judge derogating from it unjustifiably should incur civil and criminal liability. An exception from this rule should be made in cases where this is necessitated by the nature and the gravity of the alleged offence - the grounds having to be stated by the judge. Examples of such cases would be where an inhuman crime has been committed or there has been an offence against a high dignitary of the Republic. The judge should also not be held responsible for continued detention of the accused if the accused himself or a lawyer is the cause of the delay. These circumstances must be stated by the judge.

1.4. The criminal procedure should include investigatory proceedings to ensure effective application of the principle of proximity of the examining judge to the evidence and direct knowledge of the suspect. Consideration should be given, inter alia, to the permanent system of criminal investigation referred to earlier.

1.5. Machinery should be established that would effectively permit application of the principle of subordination of the criminal investigation service to the competent judge from the moment notification is received of the commission of an actionable offence. In this way, the judge assigned to the case would be able to direct and control the criminal investigation.

1.6. Provision should be made for oral proceedings in the prosecution of offences calling for a custodial penalty of up to six years at most.

1.7. The evidentiary system should be reformed by including new methods of proof, such as are already provided for under special legislation, with a view to improving criminal investigation and accelerating criminal proceedings.

1.8. The present method of pronouncing judgement should be improved, by simplifying the contents of and shortening judgements, so as to dispense with unnecessary work on the part of the judge assigned to the case.

Article 15

288. Article 60 of the Constitution of Venezuela provides that "No one may be deprived of his liberty for obligations the non-compliance with which has not been defined by law as a crime or misdemeanour." Furthermore, article 1 of the Venezuelan Criminal Code states: "No one may be punished for an act which is not expressly punishable under the law or be punished by a penalty not previously established by law ...".

289. With regard to the last part of article 15, paragraph 1, of the International Covenant on Civil and Political Rights, Venezuelan legislation contains, in article 2 of the Criminal Code, a similar provision reading: "Criminal laws shall have retroactive effect to the extent that this is favourable to the offender, even though at the time of enactment non-appealable judgement may already have been passed and the offender may be serving a sentence ...".

290. Article 44 of the Constitution of Venezuela provides as follows: "No legislative provision shall have retroactive effect except when it imposes a lesser penalty. Procedural laws will apply from the time they enter into force, even in cases that are pending; but in criminal trials evidence already introduced, in so far as it is beneficial to the defendant, shall be weighed in accordance with the law in force at the time the trial began." The Constitution also provides in article 69 that: "No one may be judged ... nor sentenced to a punishment not established by a pre-existing law ...".

291. This provision of the Constitution establishes the principle of legality, i.e. the principle _nullum crimen, nulla poena sine lege_.

292. We must also draw attention to the fact that any offence, like any judicial act in general, is governed by the law in force at the time the act was committed and that penalties established in a code that is of later date than the act for which the accused is being tried are not applicable to the offence unless the penalty prescribed in the later code is favourable to him.

293. Retroactivity is, broadly speaking, the effect of a law on the past. Under this definition, retroactive law is law whose field of application is constituted by juridical situations that arose while a previous law was in force, giving rise to the denial of rights lawfully acquired. It is situations such as this that the Constitution of Venezuela provides for in article 44 when it states that: "No legislative provision shall have retroactive effect except when it imposes a lesser penalty."

294. Logically, a new law governs the future, because, for it to be conscientiously complied with it must be known or be presumed known by those whom only the supreme interest of the nation may cause to be deprived under this principle, and for this reason only the State - embodied in the constituent power - may establish norms of a retroactive nature.

295. The ordinary law-making authority, on the other hand, is subject to the principle established in article 44 of the Constitution already mentioned above.

296. Article 2 of the Criminal Code provides as follows: "Criminal laws shall have a retroactive effect to the extent that this is favourable to the offender, even though, at the time of enactment, non-appealable judgement may already have been passed and the offender may be serving a sentence." It will thus be seen that non-retroactivity of laws, if they are unfavourable to the offender, is a general principle endorsed by our legislation.

297. Offences and all juridical acts in general are governed by the law in force at the time of their occurrence and consequently retroactivity of criminal laws applies only when it is favourable to the offender. If the new law imposes a lesser penalty for the punishable offence being tried than did the law which it modifies, it must be applied retroactively, under the principle set forth in article 2 of the Criminal Code, mentioned above. We thus see that the principle of non-retroactivity safeguards or protects the rights of the individual and of society.

298. We have noted the existence of a principle of non-retroactivity. However, in so far as the criminal law is concerned, this principle is tempered by the principle of the most favourable law, in which case retroactivity applies, except as provided in the Constitution.

299. Article 15 of the International Covenant on Civil and Political Rights is fully implemented in Venezuela and the country has a large body of jurisprudence corroborating this fact. In addition, we have the very recent "Organic Law on the Protection of Constitutional Rights and Guarantees", which protects any right of any citizen that may be infringed by any body or individual. This law thus provides us with some possibility of defence of our interests, including those rights to which reference is made above.

Article 16

300. The Venezuelan Civil Code provides, in article 16, that "all individuals of the human species are natural persons".

301. The Constitution of Venezuela establishes, in article 43, the following general rule regarding personality: "Everyone has the right to the free development of his personality, with no other limitations than those deriving from the rights of others and from the public and social order."

302. It may be stated that, in principle, under Venezuelan law the juridical personality of human beings commences at birth. Nevertheless, for certain legal purposes, account is taken of the person to be born (nasciturus), both when it is conceived and when it is to be conceived.

303. In this connection, article 17 of the Civil Code provides: "The foetus shall be deemed to have been born in matters concerning its good; for the foetus to be deemed a person it is sufficient that it should have been born alive."

The intent of the law in stating that: "The foetus shall be deemed to have been born in matters concerning its good" is to be favourable to it in the matter of acquisition of rights or improvement of its juridical status. The assimilation of a foetus to a born child is subject to the condition that it is later born alive, whether or not it is viable.

304. Our legislation also takes account of personality from before the time of conception, but only for very limited purposes laid down in the Civil Code which relate essentially to questions of succession.

305. The juridical personality of a human being is extinguished at death.

Article 17

Privacy

306. The significant growth of the media and the close social ties between contemporary human communities highlight the benefits of rapid, long-range communications. Nevertheless, there is also a risk that social growth may interfere with personal values, given that privacy is a relative concept,

which varies from one individual, group or society to another, depending on various factors, such as age, culture and religion. It is also important to bear in mind the special situation of people who, because of their political, artistic or athletic activities, are in the public eye, and to whom the rules which generally govern the behaviour of others do not apply. The concept of privacy is undoubtedly influenced by social circumstances.

307. Given these circumstances, Venezuela has explained the concept of "violation of correspondence" and dealt with that offence in article 63 of its Constitution and in articles 186, 187, 188 and 189 of its Criminal Code. It should be pointed out, however, that the traditional forms of protection of privacy have been overcome by new approaches that gather information using methods that are based on new science and technology. These methods are much more to be feared than methods based on observation and listening. Use of these new methods for gathering information about private life being inevitable, the need exists for legislation to cover the obstruction, interruption or recording of telegraph and telephone communications or conversations; such legislation should be developed by the competent authorities, subject to certain conditions:

(a) These methods should be resorted to only in the case of serious crimes (for example, drugs, or arms trafficking, or smuggling);

(b) Permission to use them should be granted by reasoned judicial order, when there are serious and specific indications of crime;

(c) The order should specify the modality and duration of the operations authorized; and

(d) Every operation should be recorded in detail in a special register.

308. Any interception that is not carried out in conformity with the law should be considered totally null and void, with the possible exception that, on the basis of a sound criterion of the public interest, proof obtained illegally may be admissible in legal proceedings, while the person responsible for obtaining that proof remains subject to civil and criminal prosecution for committing a wrongful act.

309. To meet this requirement, Venezuela drew up a Protection of Privacy Bill, which was placed before the National Congress in 1984. The Congress dealt successfully with the issue of privacy by establishing rules governing its content and providing solutions to the problems arising in this era of technological advances; it thus endeavoured to resolve the conflict between the right to privacy and the right to information by means of a civil law regime which guarantees the enjoyment of the latter right without prejudice to the former.

310. The Public Prosecutor's Department has also proposed a draft bill on the execution and use of wire-tapping. It is hoped that this bill will be promptly considered and adopted in order to ensure better legal protection of the privacy of Venezuelan citizens.

Domicile-Home

311. Venezuela has already replied to the observation of the Human Rights Committee with regard to the meaning of the term "home" with the submission, in 1979, of Dr. Ambrosio Oropeza's opinion on the scope of that particular term.

Article 18

312. In principle, a person may be deprived of or have his personal liberty restricted only on the basis of criminal proceedings. The expression "in principle" is used because a person may in certain cases be deprived of his liberty as a result of administrative measures or measures carried out by police authorities. This right of an individual in society, which permits him to act as he wishes, to travel from one place to another, to think and express his thoughts and, in general, to have full control over his acts is a fundamental natural right; it is also a political right under those systems which recognize and respect the right to self-determination.

313. Since the first text which governed Venezuela as a free nation, the Constitution has always recognized the right of every citizen to personal freedom, either in a restricted or an absolute form, as the concept of the State has developed.

Freedom of religion

314. The basic norms in this field are as follows:

(a) Article 65 of the Constitution provides that

> "Everyone has the right to profess his religious faith and to practise his religion privately or publicly, provided it is not contrary to public order or morals.
>
> Religious faiths shall be subject to the supervision of the National Executive, as provided by law.
>
> No one may invoke religious beliefs or rules in order to avoid observance of the law or to prevent another from exercising his rights.";

(b) Chapter II of the Criminal Code establishes "Offences in respect of the freedom of religion";

(c) Under article 168,

> "Any person who, for the purpose of giving offence to a religion which has been legitimately established or is being established in the Republic, impedes or interferes with the exercise of the functions or religious ceremonies of such religion shall be liable to imprisonment for a terms of 5 to 45 days;

> If the act is accompanied by threats, violence, insults or demonstrations of contempt, the period of imprisonment shall be 45 days to 15 months;
>
> Where an offence against a minister of any religious faith is committed when the latter is exercising his functions or because of those functions, the penalty for the offence shall be increased by one sixth";

(e) Article 17 states:

> "Any person who, in a place used for religious worship or in a cemetery, damages, mars or defaces a monument, painting, stone, memorial tablet, inscription or tomb shall be sentenced to imprisonment for one to six months or to a fine of 150 to 1,500 bolivars."

Freedom of thought

315. Freedom of thought is a right which does not need to be guaranteed through legal means: unexpressed thought is not subject to coercion and expressed thought falls within the scope of the freedom of expression and opinion.

316. Article 66 of the Constitution provides as follows:

> "Everyone has the right to express his thoughts in speech or in writing and for this purpose to make use of any means of dissemination, without prior censorship. However statements which constitute offences are punishable in accordance with the law.
>
> Anonymity is not permitted. Likewise, war propaganda and statements which offend public morals, or are designed to cause breaches of the law shall not be permitted. This does not mean, however, that comment on or criticism of legal principles may be restricted".

Religious tolerance is understood to mean "respect for the freedom of everyone to practise the religion of his choice".

317. In the present context, religious tolerance should not be interpreted as a discretionary act or an act of free will. From the legal standpoint, according to the constitutional and legal norms, religious tolerance is the duty to respect and have consideration for other religions. Article 43 of the Constitution provides that "Everyone has the right to the free development of his personality, with no other limitations than those deriving from the rights of others and from the public and social order".

318. Article 79 of the Constitution should be considered in conjunction with article 65, referred to above. Article 79 establishes the right of everyone freely to devote himself to science.

319. Venezuelan society is profoundly respectful of personal beliefs and the right to disseminate ideas. Freedom of worship exists in a context of peaceful coexistence; the various religious faiths each have a place in the social framework and accept the fact that other faiths may spread a different

message. As a result, these groups often undertake joint activities in the social field, thereby ensuring greater effectiveness in reaching common objectives.

320. This cultural environment provides a very firm foundation for one of the pillars of the prevailing democratic system. The State, therefore, remains within the limits determined by the Constitution, neither interfering with the activities of the various religious faiths in the country nor encouraging adherence to any of them in particular.

321. The Catholic religion has, no doubt, primacy from the point of view of numbers. While that primacy does justify a more extended relationship between the Catholic Church and the State, the contacts are restricted to essential matters and do not in any way constitute a form of protection or preference which might give rise to inequities in respect of the observation or practice of a religious faith. Consequently, the existence of an agreement between the Republic of Venezuela and the Holy See (Modus Vivendi) and the fact that the Missions Act refers expressly only to Catholic missions should not be interpreted as constituting discrimination; these circumstances arise simply from numerical superiority and, were the situation to be different, the State would not hesitate to grant recognition to other religions. Furthermore, its numerical superiority does not entitle any religious group to the granting by the State of any advantages or prerogatives.

322. State supported schools provide an illustration of the neutral position of the Venezuelan State with regard to religious faiths: there are no paid staff providing religious education in these institutions. In those institutions where religious education is provided by the Church, the freedom of students and their parents is always respected in that such education is not compulsory. Religious freedom has thus not been affected to the extent that the issue has been considered by international organizations to be of particular relevance.

323. In conclusion, the neutrality of the Venezuelan State ensures complete religious freedom and the development of freedom of conscience, with consideration for human dignity and the demands of a democratic and civilized society. At present, Venezuela has no legislation on religious matters. A draft basic law concerning religion has therefore been prepared (see annex 22), the principal feature of which is an elaboration of the provision in article 65 of the Constitution recognizing the freedom of religious belief and worship, within the limits imposed by public order, morality and the rights of others. The bill is also designed to bring together the references to religion contained in various other substantive laws.

324. Of interest are two recent cases in which the Venezuelan authorities were involved and in which they arrived at different conclusions.

325. The first case concerns the association entitled Tradición, Familia y Propiedad (Tradition, Family and Property) and also known as the Asocación Civil Resistencia (ASOCIERE) (Association for Civil Resistance). The State had to intervene because this Association was attempting to separate the young

men it had recruited from their nuclear families, transforming the climate of love and respect that should exist in every family into indifference and outright hostility towards parents and siblings. In a joint decision of the Ministry of the Interior and the Ministry of Justice, dated 13 November 1984, it was agreed to ban all the activities of this Association within Venezuela and to close down its places of operation; that action was taken because investigations had confirmed that the association was carrying out activities which were in violation of the Constitution and of the principles on which it is based, namely the need to strengthen national unity; ensure the freedom, peace and stability of the country's institutions; protect and exalt work; protect human dignity and promote the general welfare.

326. Tradición, Familia y Propiedad hoped that the public would perceive it as a profoundly Catholic association and view its members, founders and directors as faithful followers of the Catholic Church and uncompromising defenders of the family as the basic unit of society. The investigations carried out by the Technical Unit of the Criminal Investigation Department and by the Ministry of Justice demonstrated, however, that this picture was far from the truth. The following, in fact, was noted:

- Attempts to shape young men's personalities and make them conform to the doctrines of the Association;
- Loss of identification with the family and, in extreme cases, denial of the family, and encouragement to reject patriotic values;
- Total abandonment of any secondary school or university studies by the young men recruited;
- Paramilitary training and training in karate and self-defence, corporal punishment and even life-threatening outings;
- A ban on "everyday activities" such as films, television, reading magazines and any type of friendship with females, including relationships with mothers, sisters and female relations in general;
- Strict enforcement of punishments imposed; recruits were forced to take vows signed with their own blood, in a macabre rite;
- Recruits were required to spend four to five hours daily, beginning at 8 p.m., studying the teachings of the Association;
- Members of the Association made regular trips to Brazil to engage in paramilitary exercises and to practise target shooting, using the figure of the Pope as target, while their families believed that these trips were tourist outings.

327. It should be made clear that while the Government took firm and definitive action with regard to Tradición, Familia y Propiedad, which also engaged in publishing various types of propaganda, at no time has it taken measures against any publication, pamphlet or notice designed to spread the

message or doctrine of other religious faiths. Except in this particular case, which may be regarded as tristement célèbre, the various religions established in Venezuela have been able to publish their written material and broadcast their audiovisual messages in a climate of full respect for the other faiths and their communications have not incited to discrimination, hatred or violence towards other faiths or their members. The Department of Justice and Worship of the Ministry of Justice has always had a policy of open-mindedness in regard to all the religious faiths established in Venezuela.

328. The Association Nuevas Tribus (New Tribes) has been severely criticized and has been denounced on several occasions by certain sectors in the country, among them high prelates of the Catholic Church. This association, which is composed mainly of United States citizens of the evangelical faith, has been charged with creating within the indigenous Venezuelan populations a certain antipathy towards the Catholic missions and their doctrine, and attempting to wipe out the ancient culture of these populations by working against their most deeply-rooted traditions and customs. In response to these charges, the Government undertook an investigation of the association. However, the conclusion was that the group had worked with care and dedication to help the indigenous peoples and that it was operating legally in the country.

Article 19

329. Venezuela's legal system and the functioning of its institutions guarantee freedom of expression. Article 66 of the Constitution thus provides that:

> "Everyone has the right to express his thoughts in speech or in writing and for this purpose to make use of any means of dissemination, without prior censorship. However, statements which constitute offences are punishable in accordance with the law.
>
> Anonymity is not permitted. Likewise, propaganda for war and statements which offend public morals, or are designed to cause breaches of the law shall not be permitted. This does not mean, however, that comment on or criticism of legal principles may be restricted."

330. As is clear from the provision quoted above, freedom of expression, as defined in article 19 of the Covenant, is fully recognized in our Constitution. The above-mentioned provision covers the following points:

(a) the right freely to express one's thoughts, including the right not to be troubled on account of one's opinions and the right to have access to information, following an interpretation based on the provisions of the Convenant;

(b) the right to make use for this purpose of any means of dissemination;

(c) prohibition of prior censorship.

331. This precept also incorporates the restrictions applicable to this human right, but these do not run counter to the principles enunciated in the Covenant. The restrictions have been introduced to ensure respect for

the rights of others and regard for the public interest, as set out in paragraph 3, subparagraphs (a) and (b), of article 19 and reaffirmed in article 20 of the Covenant.

332. These guiding constitutional principles of freedom of expression have been sensibly applied by the national courts, which have also highlighted other elements of the system ensuring freedom of expression in Venezuela. For example, the Supreme Court of Justice, in a judgement of 1 August 1991 (see annex 23) ruled that the control which the State may exercise over the expression of thought is of a subsequent nature (subsequent censure), notwithstanding the fact that certain manifestations of expression of thought are regarded as offences. It also ruled that restrictions on freedom of expression must be defined by law and, lastly, that such restrictions may not be arbitrary, but must be based on constitutional principles and implemented by the competent administrative body (the Ministry of Transport and Communications) within the framework of the law.

333. From another point of view, an assessment of the effective exercise of this right reveals that, in general, its scope is sufficiently broad. For example, with regard to the press, there are many privately-owned publications, and their media activities are not subject to arbitrary restrictions; in the case of television, there are four private channels and two advertising channels, and there are numerous competing private radio stations. The role of the State with regard to the activities of the mass media is confined to exercising a very moderate amount of control (monitoring of programmes), which has given rise in a few rare cases to sanctions against the offending body for serious violations of basic principles of public ethics.

334. The main legislative instrument regulating the conduct of the communications media in Venezuela is the Telecommunications Act, which allows the imposition of sanctions on broadcasters when this is "... in the national interest or necessary in order to ensure public order, the safety of persons ... or public morals ..." (art. 3). These sanctions are rarely imposed in practice, and Venezuela suffers more from the lack of real controls over freedom of expression in the audio-visual media, a situation which on occasion has led to undue violations of individual or public morals.

335. In general, there is widespread agreement that the free expression of ideas is a fundamental democratic value, even if the ideas involve criticism of government policies or of persons in high positions in the economy. The population jealously defends this right and makes its views known through the media and popular organizations.

336. It would be desirable if the entire population, in particular the poorest segments of society, were given access to the mass media for the dissemination of ideas.

337. The Attorney-General has been working to secure the adoption of regulations to govern ethics in the broadcasting media.

Article 20

Propaganda for war shall be prohibited by law

Paragraph 1

338. As now noted in connection with article 19 of the Covenant, the right to freedom of expression is recognized in article 66 of the Constitution. That article goes on, however, to specify that propaganda for war, propaganda which offends public morals, and propaganda aimed at inciting breaches of the law is not permitted.

339. Venezuela has not prohibited propaganda for war solely under its Constitution. The Criminal Code contains the following provisions:

> "Any person who, within or outside the national territory, conspires to destroy the republican form of government which the State has given itself shall be punished by imprisonment for a term of 8 to 16 years.
>
> The same penalty shall be applicable to any Venezuelan citizen who seeks foreign intervention in the domestic political affairs of Venezuela or who incites to civil war in the Republic, by influencing its officials or by means of articles in the foreign press, or who utters defamatory statements concerning the President or consular officials of Venezuela, in connection with their functions, in the country in which the act is committed."

(underlining added).

340. Any person who foments civil war between the Union and its states or between the latter shall likewise be punished by imprisonment for a term of 12 to 24 years. In this regard, it is understood that propaganda disseminated through the mass media, whether by radio, television or in print, for the purpose of promoting war between the states and the Union or between the states themselves may be deemed to constitute a form of fomenting civil war. Article 144 of the Criminal Code therefore states as follows:

> "A prison sentence of 12 to 24 years shall be imposed on
>
> 1. Any person who rises publicly in rebellion against the legitimately constituted or elected Government for the purpose of overthrowing the latter or preventing it from assuming its functions.
>
> 2. Any person who, without the intention of modifying the republican form of government which the State has given itself, conspires or rises in rebellion in order to bring about, in a violent manner, a change in the Constitution.
>
> A sentence of half that duration shall be imposed on any person who commits any of the acts referred to in paragraphs 1 and 2 above against state governors, legislative assemblies or State constitutions; a sentence of one third that duration shall be imposed on any person who commits such acts against presidents of municipal councils.

> 3. Any person who foments civil war between the Union and its states or between the states themselves."

341. Article 146 of the Criminal Code, entitled Promotion of Insurrection, deals with any act the purpose of which is to incite the population of the Republic to armed insurrection against the nation's public authorities. This article reads as follows:

> "Any person who commits an act, the purpose of which is to incite the population of the Republic to armed insurrection against the public authorities of the Nation, shall be punished by imprisonment for a term of three to six years. If the acts referred to in this article are committed in respect of states of the Republic, the applicable penalties shall be less than those established under this article."

342. Furthermore, under article 164 of the Criminal Code, any person who publicly incites to the offences of uprising, rebellion, or insurrection, shall be subject to imprisonment for that act alone, that is, independently of such uprising, rebellion or insurrection as may ensue.

343. A matter related, although not directly, to the prohibition of propaganda for war is the divulging of political or military secrets, whether deliberately or through negligence. This question is dealt with in the Criminal Code as follows:

(a) Article 134:

> "Any person who, unlawfully and to the prejudice of the Republic, has divulged political or military secrets relating to the security of Venezuela, whether by communicating or publishing documents, dates, drawings, plans or other information in respect of military equipment, defences or operations or by revealing such information in another manner, shall be punished by imprisonment for a term of 7 to 10 years.
>
> The duration of the sentence shall be 8 to 12 years if the secrets have been divulged to a State that is at war with Venezuela or to agents of such a State, or where the act has interfered with the friendly relations existing between the Republic and another Government.
>
> The duration of the sentence shall be increased by one third if the offender has obtained the drawings, plans or documents, or has become aware of the secret information, by virtue of his employment, government position or responsibilities. The sentence shall also be similarly increased if the information or articles were obtained by fraud, theft or violence."

(b) Article 136:

> "If the secret information referred to in article 134 has been divulged as a result of negligence or imprudence on the part of a person who, by reason of his post, was in possession of the drawings, plans or documents or had knowledge of the secret information, the offenders shall be punished by imprisonment for a term of 45 days to 9 months."

344. Article 464, section 27, of the Code of Military Justice classifies as an offence the act of "inducing or persuading a foreign power to act against the State or the integrity of its territory"; therefore, using any of the mass media (radio, television, press, etc.) for the purpose of achieving such objectives may be considered a form of inducement.

345. The Code of Military Justice defines the offence of military insurrection in article 476. The mere act of inciting to commit such an offence shall, in the case of officers and non-commissioned officers, be punished by imprisonment for a term of 5 to 10 years and by appropriate expulsion from the armed forces, and shall, in the case of other ranks in the army and navy, be punished by imprisonment for a term of 4 to 8 years.

346. Article 499 of the Code of Military Justice provides that persons, not members of the armed forces or attached thereto, who instigate, promote or participate in a military insurrection shall be punished for their participation or for the act of instigation alone.

347. In addition to the Constitution and the codes referred to above, the Venezuelan legal system includes the Organic Law on Security and Defence of 1976 which, in article 37, provides:

> "Where a state of emergency has been declared and mobilization has been decreed, any person who organizes, supports or instigates work stoppages or other actions which interfere with or affect the organization and functioning of public services or the economic and social life of the Republic shall be punished by imprisonment for a term of three to six years."

While not directly related to propaganda for war, the act of instigating work stoppages (for which the mass media can be a highly effective vehicle) that interfere with public services may obviously, under such circumstances, give rise to widespread social unrest which can at any moment threaten internal order and create in the country a state of rebellion with unpredictable consequences.

348. Venezuela has always complied strictly with article 20 of the International Covenant on Civil and Political Rights, maintaining friendly relations with other countries, repudiating war, intervention or the use of force and seeking to settle amicably any disputes with foreign countries that may arise. Both the people and the Government have viewed with concern the recent warlike confrontations in the Persian Gulf and the breaches of domestic peace in countries in great turmoil, such as those in nearby Central America, and they have repeatedly called for an end to armed conflict.

349. Also, the media, far from disseminating propaganda for war or advocating the use of armed force in any form, have, on the contrary, always promoted order and peace, at both the national and the international level. When necessary, the media have called upon the Venezuelan people to seek peaceful solutions to domestic problems, in particular during serious economic and social crises, such as those which have recently gripped the country. There have been few, if any, cases in which violations of the laws referred to above have been brought before the Venezuelan criminal courts or military tribunals.

350. In conclusion, both in its legislative texts and in the enforcement of its laws, Venezuela is and has been in strict compliance with the provision of the Covenant which prohibits any propaganda for war.

Paragraph 2

(a) National hatred

351. Venezuela is a country open to immigrants and has admitted a not insignificant number of them, among whom it makes no distinction on the basis of nationality, ethnic group, language or any other distinction contrary to man's nature. This principle is given clear expression in article 1 of the Aliens Act: "The territory of the United States of Venezuela is open to all foreigners, subject to such limitations and restrictions as are laid down in the present Act and its regulations".

352. The restrictions on entry into Venezuela are set out in the Aliens Act; they are self-explanatory and do not in any way constitute discrimination. Entry into Venezuelan territory is thus prohibited in respect of: aliens whose presence might disturb internal order or jeopardize the ocuntry's international relations; persons who are indigent or lack means of subsistence or a legitimate occupation or position enabling them to support themselves; persons who have committed an offence under ordinary law that is clasified and punishable under Venezuelan law and who have not served their sentence, or whose case or sentence are not subject to prescription; minors aged 16 years or less who are not under the care of another passenger or who will not be placed in the care of reputable residents of Venezuela; persons belonging to organizations whose aims are contrary to public or civil order and which encourage the violent overthrow of constitutional governments or the assassination of Venezuelan or foreign public officials; persons with leprosy, trachoma, mental illness, grand mal epilepsy or any other illness which constitutes a threat to public health or which might give rise to a significant burden for the State; liquor purveyors, pedlars, vendors of or dealers in cheap items and novelties and, in general, any person whose livelihood depends on small-scale exploitation of the working classes.

353. It should be noted that, in practice, many of these legal provisions are not strictly enforced: reality has prevailed over this rather outmoded legislation and the Government has made in this field international commitments of a different character.

354. The conditions in which an alien may be expelled from Venezuelan territory are entirely logical, those affected being: any person who has taken up residence in the national territory by evading, circumventing or generally infringing the laws and regulations concerning entry; any person who endangers security or public order; any alien residing in the national territory who has been convicted and has not served his sentence or who has been charged in another country with offences classified as such and punishable under Venezuelan law, except where the offences are of a political nature; or who jeopardizes international relations, violates the neutrality which he should maintain in respect of Venezuelan political matters, conceals his true name, identity or domicile, carries forged or altered identity documents or refuses to produce his identity documents.

355. In practice, cases of expulsion of aliens from Venezuelan territory are not only infrequent but may be regarded as exceptional. Expulsion is basically used in the case of aliens who are prosecuted for drug trafficking and only where the final judgement calls for it. Faced with the social reality of the irregular status of many aliens, the Government has sought to regularize and normalize their status by various means.

These have included the Regulations concerning Entry in the General Register of Aliens published in the Gaceta Oficial on 23 May 1980. Under these Regulations all aliens resident in Venezuela who were in the national territory on the date of publications of the Regulations have to register. Article 3 of the Regulations provides that "Those aliens whose residence in the territory of the Republic has not been regularized and who have duly applied for entry in the General Register may be accorded, in connection with the regularization of their status, preferential treatment over those aliens who fail to apply, voluntarily and within the set time-limits, for entry in the General Register, provided they entered the country prior to the date on which the present Regulations were promulgated".

356. By means of these Regulations, Venezuela has given a substantial number of aliens, in particular nationals of neighbouring countries, the opportunity to regularize their status, instead of being expelled. The Regulations provide that, once an alien has done this, his security and dignity and those of his family will be safeguarded.

357. Article 45 of the Constitution provides: "Foreigners have the same duties and rights as Venezuelans, with those limitations and exceptions established by this Constitution and the laws".

358. With regard to voting, article 8 of the Organic Law on Voting provides as follows:

> "In separate elections for members of the Minicipal councils of the Republic and in mayoral elections, foreigners who meet the voting requirements for Venezuelans set out in the preceding article, have resided in Venezuela for over five years, and have resided for one year in the district in question, shall have the right to be registered in the permanent electoral roll and to vote".

359. The holding of certain public offices is restricted under the Constitution to persons who are Venezuelan by birth. These offices are those of President of the Republic, Ministers in the Executive Office, senator, deputy, Prosecutor-General of the Republic, supreme court judge, Attorney-General of the Republic and Comptroller-General of the Republic.

360. Article 30 of the Aliens Act provides:

> "Aliens may not hold government posts. Nevertheless, the Federal Executive is authorized to admit aliens to government service in the areas of social welfare and public health, civil and military education, and, in the case of engineers and technicians, in the various shipyards or the Navy." Thus, in practice, some aliens are employed in government service.

361. The rules cited above cannot be regarded as in any way constituting discrimination against nationals of other countries, since the Venezuelan State is obliged to protect itself in the political sphere and these are valid grounds for the provisions referred to.

362. Under the Naturalization Act, aliens, regardless of their country of origin, who are legally in Venezuela, may obtain Venezuelan nationality by fulfilling a number of requirements that may be regarded as reasonable. Under the Act, the relevant decision must be taken within five months of the submission of the required documents.

363. The economic rights of foreigners residing in Venezuela are considered to be on a par with those of Venezuelan nationals.

364. The hospitality offered by Venezuela to the nationals of many countries is reflected by the fact that the majority of these aliens have acquired Venezuelan nationality. Many immigrants, leaving behind the devastated countries of Europe, arrived during the post-war years and were warmly received in Venezuela, where they settled permanently. More recently, another group of immigrants, mainly political exiles from the Americas, have sought refuge in Venezuela; even though democracy has been re-established in their countries of origin, many of those immigrants have remained in Venezuela.

365. Venezuelan law does not contain any specific provisions establishing penalties for any person who uses the media, in any manner whatsoever, to promote hate, discrimination or violence between nationals and foreigners, such action being prohibited under the Constitution. Any legislation in that regard would need to specify the type of written communication or radio or television broadcast considered to be discriminatory in respect of nationals of other countries and to define clearly the applicable penalties. The establishment of such laws would undoubtedly be valuable and beneficial from a legal standpoint. However, as mentioned earlier, propaganda inciting to hatred of foreigners is unknown in practice; furthermore, propaganda of that nature would meet with censure from the entire community, since it would find no echo among the Venezuelans, the forebears of so many of them having emigrated from other countries.

366. In addition, any foreigner residing in Venezuela who believes that his constitutional rights and guarantees have been violated on grounds of his nationality may have recourse to the constitutional remedy of *amparo*, in accordance with the provisions of the Organic Law of *Amparo* on Constitutional Rights and Guarantees.

367. In general, there is no discrimination of any kind against nationals of other countries, regardless of the extent to which their ethnic group, language or customs may differ from that of the Venezuelans.

(b) Racial hatred

368. One of the fundamental tenets of the Constitution is set forth in its preamble, which refers to the aim of "maintaining social and legal equality, without discrimination on grounds of race, sex, beliefs or social status".

Article 61 of the Constitution states that "Discrimination based on race, sex, beliefs or social status shall not be permitted", while article 50 contains the following provisions:

> "The enunciation of rights and guarantees contained in this Constitution must not be construed as a denial of others which, being inherent in the human person, are not expressly mentioned herein.
>
> The lack of a law regulating these rights does not impair the exercise thereof."

369. As can be seen, the principle that there shall be no discrimination on grounds of race is expressly laid down in the Constitution, since it is inherent in the human person to repudiate any notion of the superiority of one racial group over another. With the promulgation of the Organic Law of _Amparo_ on Constitutional Rights and Guarantees, any inhabitant of Venezuela who believes that his rights and guarantees under the Constitution have been or are being violated or threatened because of his race may, under that Law, have recourse to the remedy of _amparo_.

370. One of the features of Venezuela is its mixed-race population, the result of the intermingling of various races. In view of this special situation where the person of mixed race is the rule, there is obviously no place of any racial discrimination. One per cent of the population is indigenous.

371. While there are very few laws prohibiting racial discrimination or the advocacy thereof, there can be said to be no practical need to legislate in that area since Venezuela has no problems with respect to racial discrimination or advocacy of racial discrimination. It would be otherwise if there had been violent confrontations between ethnic groups or if certain people had been marginalized on the basis of physical characteristics. That situation, however, is fortunately unknown in Venezuela. The Parliament, which must keep pace with social realities, would in that case have enacted appropriate laws. It has not done so because that has not been necessary. The media have never disseminated messages inciting to racial hatred, violence or discrimination.

372. Although they do not suffer racial discrimination, the indigenous populations benefit only marginally from socio-economic development. In this connection, article 77 of the Constitution provides as follows:

> "The State shall seek to improve the living conditions of the rural population.
>
> A special system calling for protection of the indigenous communities and their progressive incorporation in the life of the Nation shall be established by law."

373. Concerned at the situation of the indigenous populations, the Ministries of Education and Justice have, with limited resources, made great efforts to develop policies for incorporating into the life of the Nation these Venezuelans, who live remote from the centres of civilization and of economic, social and cultural progress.

(c) Religious hatred

374. Religious faiths legally established in Venezuela are protected not only, by definition, under the constitutional provisions mentioned above, but also by the Criminal Code, which provides penalties for any person who acts in a manner that is offensive to any authorized religion in the country or to any persons professing that religious faith.

375. While this subject may be amply explained by reference to article 18 of the Covenant, it should be noted that the media in Venezuela treat with due respect the followers of all the established religions in the country, regardless of their particular religious beliefs, and have never published any material advocating discrimination against, hatred of or violence towards any religious faith or its members.

376. Futhermore, any person who considers that, because of his religion, his rights or guarantees under the Constitution have been violated or threatened may have recourse to the constitutional remedy of amparo.

Article 21

Right of assembly

377. In Venezuela, the right of assembly is understood to refer to a temporary and voluntary gathering of a number of persons at a specific place, by agreement among the persons concerned, and for a pre-established purpose. Assemblies may be public or private. Private assemblies are meetings held in an enclosed place (house, club, etc.) open to persons who have been invited beforehand. Public assemblies are meetings held in a public place, such as a street or square, or a place open to the public, such as a theatre or church. The characteristic of public assemblies is that anyone is entitled to take part in them.

378. This right is recognized in the Constitution, in article 71, which reads: "Everyone has the right to assemble, publicly or privately, without prior authorization, for lawful purposes and without bearing arms. Meetings in public places shall be governed by the law".

379. In the light of this provision of the Constitution and the information provided by legal writings and court practice, it can be said that the exercise of this right involves a number of factors:

(a) Any restrictions must be reasonable and unvarying;

(b) The assembly's purpose must be lawful, in other words, it must not be inconsistent with the Constitution, the law and public morality;

(c) Assemblies must not, because of the circumstances in which they are held, pose a threat to law and order;

(d) Any prohibition shall be based, not on ideas, opinions or beliefs, but on the purpose for which the assembly is to be held;

(e) The duration and, where appropriate, the itinerary of the gathering, as well as the number of persons participating, may not be determined arbitrarily.

380. The legal instrument regulating this matter in Venezuela is the Political Parties, Public Meetings and Gatherings Act of 24 March 1965 (see annex 26). This Act states that private meetings are not subject to its provisions. However, it should be noted that the meetings subject to the regulations are characterized, not by the place at which they are held, or the number of participants, but by their political nature or character. Thus, meetings held for the purposes of conspiracy, for example, may be halted or dispersed by the authorities without infringing the legal rules. The Act maintains the system, not of authorization, but of notification to the civilian authorities, 24 hours in advance of the place, date and time of the meeting.

381. The purpose of notification is to obtain approval of the place indicated by the Sponsors, since there are places where, for obvious reasons, political meetings may give rise to disturbances of the peace and be detrimental to sectors of society not concerned with them or with their objectives. For the purposes of proper exercise of the right of assembly, the Act requires the State and the Federal District Governors to fix in advance the places at which public meetings may lawfully be held. Lastly, it should be noted that meetings regulated by the Act should not be confused with "mass demonstrations", i.e., a large number of persons who gather together at the same time, without prior agreement. These may be dispersed in the same way as meetings and gatherings which degenerate into political assemblies or try to prevent the normal functioning of administrative or judicial bodies or create disorder or hinder freedom of movement. In such cases, persons caught *in flagrante* are imprisoned for 15 to 30 days. The same regulations as for the right of assembly are established under the Act in regard to public parades and gatherings which for the first time in Venezuela are the subject of legislative measures.

Restrictions on freedom of assembly

382. Like all other freedoms, freedom of assembly is not absolute and there are some restrictions. The right of assembly should be viewed as being subject at all times to reasonable regulations in which order, safety and the public peace are the inescapable components and are the ineluctable obligations of the authorities.

383. The statutes proclaim and safeguard freedom of assembly. However, the principle of such freedom is implemented to a greater or lesser extent, depending on the nature and purpose of the meeting. This is to make sure that meetings do not lead to disturbances of public order and are not used to prepare or commit offences which prevent the exercise of lawful rights - contingencies that the authorities must allow for and avert.

384. The rules governing the exercise of freedom of assembly in Venezuela are of two kinds:

(a) Rules forming general regulations, to be established solely by law, in accordance with constitutional principles, as categorically prescribed in article 71 of the Constitution;

(b) Rules involving special regulations, as in the case of the various relevant municipal ordinances.

385. Apart from the general characteristics typical of any meeting, there may be special features, either because of the nature of the movement, the component elements of the meeting, or its object and purpose. These factors determine the degree of danger to public order and personal safety. Hence, it is a fundamental duty of the police to take these combined circumstances into account and to take the necessary measures in consequence. However, it should always be remembered that the police have to act in accordance with the Constitution and the law and that they may never go beyond them on any pretext whatsoever.

386. The Political Parties, Public Meetings and Gatherings Act allows for police action under articles 42 and 44, which read:

> "Article 42. The authorities shall ensure the normal conduct of public meetings and gatherings held in accordance with the requirements of the law ...
>
> Article 44. The competent authorities shall take any preventive measures in connection with public meetings and gatherings which have not been duly notified or which are intended to be held in breach of the provisions of this Act".

387. The police's task in connection with meetings and gatherings is exclusively passive; it must be confined to keeping order in three respects:

(a) Among the participants;

(b) Protecting the latter from any restraints from third parties;

(c) Protecting the latter from any disorder among the participants in the meeting or gathering: in no way or any account whatsoever can the police become involved in the discussion of ideas or the expression of opinions that form the purpose of the meeting or gathering without seriously affecting the constitutional right to freedom of expression.

388. Lastly, the need to regulate freedom of assembly is unquestionable if such freedom is to be effectively and fully exercised so that it does not degenerate into disturbance of law and order. However, there are limits on the power to issue regulations, for it cannot go so far as to do away with the right of assembly on the pretext of regulating it or on the alleged grounds of defending public institutions.

389. However, to avoid excesses by the forces of law and order at gatherings of people, two bills have been placed before Congress this year, one being the "Demonstrations, Marches and Other Peaceful Protest Activities Act" and the other being the "Crowd Control Prohibition of the Use of Weapons Act". A bill has also been proposed to amend the Political Parties, Public Meetings and Gatherings Act. This would prohibit improper suppression of public demonstrations by students (see annexes 24, 25, 26 and 27).

Article 22

390. Venezuela's legal system fully safeguards the right to freedom of association in all respects. Article 70 of the Constitution states: "Everyone is entitled to associate with others for lawful purposes, in accordance with the law". Article 72 provides that "The State shall protect associations, corporate bodies, societies and communities whose purpose is to secure full realization of the aims of individuals and of society, and shall promote the organization of cooperatives and other institutions for the improvement of the public economy".

391. As to the right to form trade unions, article 91 states:

> "Workers' and employers' unions shall not be subject, for their establishment and operation, to any requirements other than those laid down by law to ensure full accomplishment of their functions and to guarantee the rights of their members. In their employment, sponsors and executives of workers' unions shall be specifically protected by law for the period and under the conditions required to ensure freedom of association".

392. It will be seen that the right to freedom of association is fully recognized by the Constitution. Indeed, the Constitution not only acknowledges this right but it makes it the duty of the State to protect the various kinds of association set up within the existing legal framework. It contains an all-encompassing set of rules relating to freedom of association which deal with the main aspects of this right. Article 91 of the Constitution covers the following points:

(a) The right to form trade unions, subject only to the requirements established by law "for the purpose of ensuring better accomplishment of their functions and guaranteeing the rights of their members";

(b) The right to independent management of the trade union organization's activities, which are subject only to the restrictions imposed by the law and to strict compliance with the purposes mentioned above;

(c) Sponsors and executive members of trade union organizations are afforded protection.

393. In furtherance of these provisions of the Constitution, article 91 of the Civil Code lays down that the following are legal persons and therefore have rights and obligations: (i) the Nation and its political bodies; (ii) the

churches, of whatever denomination, the universities and, generally speaking, all public bodies; (iii) lawful associations, corporations and foundations of a private character. It can be seen from this rule that freedom to form such associations does exist, provided it does not involve any breach of article 6 of the Civil Code, which stipulates that: "Observance of laws involving public policy or public morality may not be relinquished or relaxed by private agreement".

394. Again, in connection with the right to form trade unions, article 400 of the Labour Organization Act states: "Both workers and employers are entitled to associate freely in unions, which may in turn form federations and confederations".

395. In acknowledgement of one of the important aspects of freedom of association, article 401 states that:

> "No one may be obliged or directly or indirectly compelled to join or not to join a trade union.
>
> Trade unions are entitled to draw up their own by-laws and regulations and freely elect the members of their executive board, to plan and organize their administration and to establish guidelines for their trade union action.
>
> The trade union's by-laws shall determine the local, regional or national scope of their activities".

396. In confirmation of the readiness of the State to protect unions from any improper outside interference, article 42 of the Act states:

> "The State shall ensure that no restriction or pressure of any kind is brought to bear on unions, federations or confederations in the conduct of their activities and that they are not subjected to any discrimination detrimental to the democratic pluralism guaranteed by the Constitution".

Furthermore, article 418 provides that independent workers may also form unions.

397. It should be noted that freedom of association in all its principal forms is not merely the subject of rhetoric in Venezuelan law. It is a right that is respected in practice, in regard to both private associations in general and to trade union organizations. Similarly, if some act is committed which violates this right, the remedy of amparo is available, together with administrative channels to secure similar protection, as in the case of appeals to the Labour Inspector.

Article 24

398. The report on the measures adopted by Venezuela for the purpose of complying with the requirements of article 24 will be submitted using the following methodology. In the first place, we will give a general description of the existing legislation, and to that effect report on relevant constitutional provisions, the Convention on the Rights of the Child, the Minors Protection Act, ILO Convention No. 138 concerning Minimum Age for Admission to Employment and the Organic Labour Act. In the second place, a presentation will be made of the measures adopted by the State in compliance with the requirements of the Covenant classified in terms of Government child-care programmes and of existing policies for promotion of the rights of the child (National Conference).

Constitutional and legal provisions

(a) Constitutional provisions

399. The constitutional provisions are as follows:

(a) Article 73: Enshrines the protection of the family as the basic nucleus of society;

(b) Article 74: Ensures all children comprehensive protection from conception until full development under favourable material and moral conditions;

(c) Article 75: States that the law shall establish machinery which will enable all children, regardless of filiation, to ascertain their parentage. Provides for special legislation and courts for minors;

(d) Article 78: Enshrines the right to education and lays down the duty of the State to ensure access to education by creating institutions for that purpose;

(e) Article 93: Ensures special protection for minors who work.

(b) Convention on the Rights of the Child

400. The Convention on the Rights of the Child was ratified by Venezuela on 29 August 1990. This Convention is an international legal instrument dealing with the protection of the rights of the child in the framework of the promotion of human rights.

401. Venezuela participated actively in the World Summit for Children (Venezuela was a member of the promoting committee) held on 30 September 1990. This Summit of Heads of State and Government adopted a Plan of Action for the 1990s which sets out a series of goals to be achieved in the areas of survival, development and protection. Venezuela also promised

the international community that it would hold a Venezuelan National Conference on the Rights of the Child. The announcement to that effect was made by the President of Venezuela, Mr. Carlos Andrés Pérez, to the General Assembly of the United Nations at the World Summit. The holding of that National Conference formed part of the programme of activities to promote the implementation of the Convention on the Rights of the Child which is commented upon in the second section of this report.

(c) Minors Protection Act

402. The Minors Protection Act entered into force on 30 December 1980, repealing the Statute of Minors promulgated in the 1940s. In general terms, the Minors Protection Act is a legal instrument which sets out the substantive and procedural principles applicable in matters relating to minors.

403. In its structure, this Act divides the main themes of the law relating to minors into three broad areas. Thus, there is one chapter (Book One) dealing with the main rights of children. A second chapter regulates the organization of the family; it focuses on the regulation of the rights and duties of parental authority (care, maintenance, regime of visits) and also makes provision for a special procedure for the settlement of disputes arising with regard to the exercise of parental authority, and specifically in cases of maintenance, care and custody. The third group of rules (Book Three) is devoted to minors in an irregular situation, dealing with three types of situation in which a child may be found: abandoned, in peril and in delinquency. Provision is made for the measures to be taken by the State in each of these situations and for a special procedure before the juvenile courts. Lastly, the Act contains a special chapter (Book Four) dealing with the juvenile courts and organizes them in two tiers: courts of first instance and appeal courts. In Venezuela, there is no special chamber for minors in the Supreme Court of Justice. It should be pointed out that family civil courts also have jurisdiction in certain matters.

404. At present, Venezuela has 76 courts for juveniles at the national level, 47 of which are specialized juvenile courts; the remaining courts also deal with cases relating to ordinary civil, commercial, criminal, traffic and labour matters.

405. Generally speaking, the Act conforms with the requirements of the Covenant and of the Convention on the Rights of the Child, except that it does not regulate problems of international humanitarian law or the position of ethnic minorities or differentiate in the approach to the classification of offences committed by juveniles. In this context, the basic difference with the Convention on the Rights of the Child is that in Venezuela a minor can be treated as an offender for a breach of municipal ordinances, whereas under the Convention he can only be so regarded for committing offences classified as such by law. Particulars of the provisions of the Act are contained in the supplementary report by Venezuela (CCPR/C/6/Add.8) as well as in the present report under article 14, paragraph 4, of the Covenant (paras. 262-275 above) (see annex 28).

D. ILO Convention No. 138

406. This Convention was ratified by Venezuela in January 1984. The Convention sets out to eradicate the employment of minors and to that end prohibits the employment of minors under the age of 15 (the Convention allows countries with an insufficiently developed economy to adopt 14 as the minimum age - Venezuela has opted for that age), in both the formal and informal economies. This Convention introduced into Venezuelan law the prohibition of independent work by minors (the Labour Act and the Minors Protection Act applied only to relations of subordinate employment).

Organic Labour Act

407. This Act is a recent one; it entered into force on 1 May 1991 and contains a chapter devoted to child labour. Its purpose is to prohibit work by minors under the age of 14 (with the exception of light work by those over the age of 12, with the authorization of the administrative authorities). The possibility of work at the age of 14 is subject to the authorization of the Ministry of Labour and provision is made for a shorter working day and for the prohibition of certain types of activities considered harmful to the health and moral development of minors.

Measures adopted by the Venezuelan State in favour of children

(a) Programmes of direct assistance to children

408. It must be pointed out that Venezuela has a considerable child population. The most recent available figures give an estimate of approximately 19,735,000 for the total population of the country, with children accounting for almost half that total. (Data taken from the Survey of Homes carried out by the Central Office for Statistics and Computing. The figures have been taken from the working document of the National Conference on the Rights of the Child.)

409. In view of the increase in the number of inhabitants living in poverty in recent years, the Venezuelan State is directing its social strategy towards those in greatest need. To this end, the present social policy is based on a system of direct subsidies focused on the needy, with attention being concentrated on children. Within this new action plan the State has replaced as from 1989 the system of general subsidies (food subsidies) by that of direct subsidies, investing approximately 25 per cent of its budget in programmes to combat poverty.

410. The following table sets out the main measures adopted in favour of children, many of which are implemented jointly with non-governmental organizations.

PROGRAMMES OF DIRECT ASSISTANCE TO CHILDREN, 1990

HEALTH AND NUTRITION

PROGRAMMES	EXECUTING AGENCY	TARGET POPULATION	GOALS	BUDGET (millions of bolívares)
1. PRIMARY HEALTH CARE PROGRAMME:*				
1.1. EXTENDED MOTHER AND CHILD PROGRAMME (PAMI):	PAMI Foundation	Poor nursing women in the breast-feeding period (500,000), and children under 6 years old (1.8 million) living in poverty	310,000 women 1,240,000 children	1.486
Programme developed through the network of out-patient health services (4,234 nation-wide). Began in December 1989. Involves free supply of foodstuffs (milk, in the present phase of its implementation) to the population to the extent that it cooperates with the preventive consultation programme for mothers and children. Private enterprises, under contract for that purpose, are responsible for the food distribution component of the programme.				
1.2. HEALTH CARE PROGRAMME (PAS):				
Programme involving the strengthening of primary care services, demand for which has grown in consequence of the extended coverage resulting from PAMI. It includes the following activities: routine vaccinations, epidemiological information, control of sexually transmitted diseases, control of cancer of the uterus and breast, oral health control, health education and education in monitoring the growth and development of assisted children. Programme initiated in 1990.	Ministry of Health	Poor nursing women in the breast-feeding period (500,000) and children under 6 years old (1.8 million) living in poverty	310,000 women 1,240,000 children	425.8
1.3. COMMUNITY EDUCATION PROGRAMME (PEC):				
Includes social promotion initiatives for the purpose of involving the community in the detection and solution of its health problems. This programme is intended to consolidate the achievements in the matter of health improvement resulting from the development of PAMI and PAS. Programme initiated in 1990.	Ministry of Family Affairs and Ministry of Health	Communities in which the target population of the PAMI programme lives	Communities in 18 federal entities	51.4

HEALTH AND NUTRITION

PROGRAMMES	EXECUTING AGENCY	TARGET POPULATION	GOALS	BUDGET (millions of bolívares)
2. FOOD ALLOWANCE:				
Direct subsidy in cash given through the commercial bank network to families whose children attend rural or marginal urban educational institutions. It involves monthly disbursements of Bs. 500 per child (up to three children per family). It is accompanied by programmes providing guidance in the use of the subsidy for improving the nutrition of children in the family group. An additional objective is the increase of coverage and the reduction in the number of school drop-outs. Programme initiated in November 1989.	Ministry of Education	Children of pre-school age and in the first six years of basic education living in poverty (2.9 million)	2 million	9.522
3. MILK ALLOWANCE:				
Direct subsidy supplementary to the food allowance. Consists of the issue of a coupon which can be exchanged for milk products in the commercial food-supply network. Each coupon is equivalent to 1 kilogram of powdered milk or 8 litres of liquid milk. Issued monthly with the food allowance, with which it shares the same goals. It constitutes a subsidy which is better focused than the food allowance and is the first step towards a system that will convert that allowance into a procedure for the direct transfer of food. Programme initiated in September 1990.	Ministry of Education	Children of pre-school age and in the first six years of basic education living in poverty (2.9 million)	2 million	1.020
4. PROGRAMMES OF THE NATIONAL FOOD INSTITUTE:				
These are pre-existing programmes which are being revised and receiving additional budget funding with the aim of increasing their coverage.				
4.1 GLASS OF MILK AT SCHOOL:				
Programme involving the supply of an additional 200 cc of pasteurized milk distributed through the school network.	National Food Institute	Children of pre-school age and in the first six years of basic education living in poverty (2.9 million)	2,114,000	1.700

	PROGRAMMES	EXECUTING AGENCY	TARGET POPULATION	GOALS	BUDGET (millions of bolívares)
HEALTH AND NUTRITION	4.2 SCHOOL CANTEEN PROGRAMME:				
	Programme to supplement the nutrition of populations with detected nutritional deficiencies. It consists of a daily lunch prepared and served in the school establishments of the target population.	National Food Institute	Schoolchildren receiving basic education who suffer from verified food deficiency	310,500	562.8
	4.3 SCHOOL SNACK PROGRAMME:				
	Daily supply of of a maize cake with protein content to the target population.	National Food Institute	Children of pre-school age and schoolchildren receiving basic education who suffer from verified food deficiency	842,000	524.9
	4.4 LACTOVISOY PROGRAMME:				
	Programme for the provision of food supplements to populations with detected food deficiencies. It consists of the supply through the school network of a product derived from soya.	National Food Institute	Children of pre-school age and schoolchildren receiving basic education who suffer from verified food deficiency	273,000	206.7
EDUCATION	1. PROGRAMME FOR THE DISTRIBUTION OF SCHOOL UNIFORMS AND SUPPLIES:				
	This programme consists of the free grant of a basic school wardrobe, as well as books and teaching materials, thereby covering the needs for the whole year under these headings. It is implemented at the beginning of the school year and its purpose is to favour attendance by children whose parents do not have sufficient resources to bear the cost involved in fitting a child for school attendance. This subsidy was initiated in September 1990, is given to educational institutions covered by the food allowance programme and is intended at the same time to promote small and medium-sized industries which are given preferential treatment in the system of invitations to tender for the supply of uniforms and equipment.	Ministry of Education	Children of pre-school age and in the first six years of basic education living in poverty	200,000	2.011

	PROGRAMMES	EXECUTING AGENCY	TARGET POPULATION	GOALS	BUDGET (millions of bolívares)
EDUCATION	2. EXPANSION OF PRE-SCHOOL EDUCATION:*				
	By means of this programme, the Government intends to direct resources to the expansion of that part of the network of pre-school educational institutions catering for the marginal population. The goals proposed for this programme concern exclusively the pre-school population from these sectors. Operating side by side with the formal educational system, activities will be developed for the purpose of strengthening unconventional alternatives directed to those same sectors on the part of both the State and private sectors.	Ministry of Education	Pre-school population, not cared for and living in poverty (600,000)	20,500	255.1
	3. SOCIO-CULTURAL DEVELOPMENT PROGRAMME:				
	This programme comprises activities in the informal educational field, with the aim of improving the quality of school performance for the population below the age of 18 in marginal areas throughout the country. It comprises extramural activities which involve the family nucleus and community organizations of the target population. It also comprises recreational, cultural and sports activities to promote the positive use of leisure time.	Ministry of the Family	Children and young people between the ages of 4 and 18 living in poverty poverty (3,750,000)	250,000	179
COMPREHENSIVE CARE	DAY-CARE HOME PROGRAMMES:				
	Programme intended for the care of children of working mothers residing in marginal communities, operating through the day-care system and guaranteed to meet the needs for care and nutrition in a family environment which promotes healthy growth and development. The cost of this care is borne by the State jointly with the family, which must make a small contribution in line with its financial resources. This programme was established in the period 1973-1978 and has now been strengthened with a view to its expansion.	Ministry of the Family Child Foundation and other NGOs	Children up to the age of 6 with working mothers and living in poverty (1.8 million)	101,000	1.180

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* These programmes are components of the Social Development Project which the Venezuelan Government has been negotiating since 1989 with the World Bank, requesting from the Bank additional financing of $100 million for its implementation. The project involves technical assistance by the Bank and the development of its monitoring systems in order to make it possible to measure the impact of programmes.

(b) National Conference on the Rights of the Child

411. In view of our country's commitments as expressed to the United Nations, to conduct activities aimed at the protection of children, the President of the Republic issued a decree establishing a Presidential Advisory Commission for the Organization of the National Conference on the Rights of the Child. The goal of the National Conference was "... to analyse and evaluate the situation of children in Venezuela and the child care programmes conducted in both the public and private sectors, and to adopt a plan for the decade aimed at establishing the conditions needed for better fulfilment of the rights laid down in the Convention on the Rights of the Child." The Conference was preceded by a series of Government-sponsored events whose purpose was to mobilize society as a whole in the cause of protecting the rights of the child.

412. The National Conference took place at Caracas on 27-29 August 1991 with the active participation of non-governmental and governmental bodies. Discussion focused on the themes proposed by UNICEF to systematize the content of the Convention on the Rights of the Child, namely: survival, development, protection and participation. The results of the Conference will serve as the basis for elaborating the Plan of Action for Children that the Venezuelan State is to implement in the 1990s.

413. The conclusions of the Conference are along the same lines as the Declaration and Plan of Action of the World Summit for Children, while reflecting the particular features of the country. The major points are the following:

(a) Survival:

(i) The need to focus care on mothers, children and adolescents, who represent the most vulnerable strata of the population;

(ii) The need significantly to decrease illnesses and deaths due to easily-preventable causes (diarrhoea, acute respiratory infections, malnutrition, etc.);

(iii) Reduction of infant mortality by 50 per cent in comparison with 1988;

(iv) Promotion of a national nutritional education strategy;

(v) Administrative decentralization in the health sector, to involve the community in solving its own particular problems

(b) Development:

(i) Expansion of pre-school education coverage at the national level;

(ii) Achievement of 100 per cent coverage in basic education and reduction of the number of children repeating courses or dropping out;

(iii) Reduction of illiteracy;

(iv) Improvement of the quality of teachers;

(v) Involvement of the family in the process of educating children

(c) Protection:

(i) Decentralization of social welfare programmes to adapt them to regional situations and enable the State or municipal authorities to meet specific commitments resulting from the Conference;

(ii) Reform of the Minors Protection Act;

(iii) Establishment of the Civil Registry Act;

(iv) Review of the Adoption Act

(d) Participation:

(i) Sounding children out about their problems and expectations, through municipal and local government bodies and community organizations;

(ii) Encouragement of neighbourhood associations to consider children's right to participate in their activities, in keeping with their interests and motivations and according to age.

One significant aspect is the participation by State agents in the promotion of the rights of the child.

414. In the framework of the National Conference, the state governors signed a document pledging to foster a series of measures in their regions aimed at meeting children's needs. The document was called the Agreement between the National and Regional Executive Branches on behalf of Children for the 1990s. This document expresses a political commitment by the governors and the President of the Republic to take a series of measures aimed at achieving the full development of children.

415. This commitment is useful for the following reasons:

(a) It establishes very precise commitments regarding the formulation and implementation of the laws;

(b) It supports the decentralization process, which gives each state a greater opportunity to manage its own problems, by administering its own resources without depending on the national authorities;

(c) It provides for greater independence in formulating local goals;

(d) It stipulates that in the formulation of development plans, particularly social policies, for each state, mothers and children will be the primary beneficiaries when the time comes for allocating available resources.

Article 25

The right and the opportunity:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives.

416. As indicated at the beginning of the report, article 3 of the Constitution states the following: "The Government of the Republic of Venezuela is and always shall be democratic, representative, responsible and alternating" (emphasis added). In defining the type of government that is to shape the country's destiny, the constituent assembly clearly stipulated that one of those features should be representativeness, which assumes the existence of bodies reflecting the sovereign will of the people and taking most of the political decisions. Thus article 4 of the Constitution stipulates: "Sovereignty resides in the people, who exercise it, by means of suffrage, through the branches of the Public Power". The Venezuelan constitutional system clearly links the principle of representative government with the means by which it is exercised, namely the expression of the will of the people through suffrage. Thus when this mechanism gives rise to the election of representatives of the sovereign people (President, deputies and senators, governors, mayors, town councillors and delegates to the legislative assemblies), the requirements of article 25 (a) of the Covenant are fully met.

417. Our democratic system is based on the people's designation or election of persons it trusts, who, in turn, resolve problems regarding the composition of the Public Power and the direction to be taken by the rulers in their administration of the country; thus the people, the repository of national sovereignty, elects its rulers. This right to choose who are to perform the functions of government is the right to vote, or suffrage, which can be divided into the right to elect (active suffrage) and the right to be elected to public office (passive suffrage).

418. It should also be noted that our constituent assembly supplemented its conception of citizens' participation in public affairs with the institution of political parties, and to that end stipulated in article 114 of the Constitution: "All Venezuelans qualified to vote have the right to associate together in political parties in order to participate, by democratic methods, in the orientation of national policy. The lawmaker shall regulate the organization and activities of political parties in order to safeguard their democratic character and to guarantee their equality before the law" (emphasis added).

419. Thus the democratic, representative system in Venezuela is based on the exercise of suffrage, and since the enactment of the current Constitution, the people have participated in seven general elections to choose the basic governmental bodies, plus (for the first time in 1989) a separate election to elect state governors, mayors and town councillors.

420. This democratic, representative framework is supplemented by the people's direct participation through referendum (Constitution, art. 246, para. 4) and legislative initiative (Constitution, art. 165, para. 5) and was improved

in 1989 with the entry into force of the new Municipal System Organization Act, which supersedes the 1978 Act, partially reformed in 1984 (see annexes 29 and 30).

421. The referendum as a participatory element of popular sovereignty has been provided for constitutionally, for the sole purpose of the general reform of the Constitution. To that end, once the reform bill has been prepared and adopted by the Chambers, it is submitted to referendum at a time fixed by the Chambers, so that the people may decide in favour of or against the reform.

422. The legislative popular initiative consists of the submission of bills to Congress for approval by not less than 20,000 voters, identified by law. For example, the first draft Governors Act was introduced into the National Congress in 1986 at the request of the Neighbourhood Associations.

423. Efforts to improve the democratic system by achieving direct political participation by citizens have focused directly on the municipality, as the primary and autonomous political unit within the national organization (Constitution, art. 25). Under the new municipal law a citizen residing in the municipality can participate in municipal policy and control directly, through corporations, or through associations or other types of organizations. The types of participation include participation in elections for mayor and town councillor, revocation of those mandates, referendums, initiatives for establishing local entities, requests for reconsideration of ordinances, votes of confidence, open town councils, neighbourhood surveillance and property control.

424. The community of the municipality, made up of the residents under its territorial jurisdiction, not only nationals but also foreigners with over 10 years' residence in the country and over one year's residence in the municipality, is competent to elect its municipal authorities. Thus in the municipal sphere, residence is a key concept not only for the election of the authorities, but also in order to be elected mayor, town councillor or member of a neighbourhood board (Municipal System Organization Act, arts. 52, 56 and 73).

425. One mechanism for institutional participation is the open town council (Municipal System Organization Act, art. 171), which considers matters of local interest at the written request of a minimum of 10 local residents at least 15 days prior to the date of the meeting. The residents participate in these meetings by asking questions, expressing opinions and making requests and proposals. In addition, the neighbourhood cooperatives (Municipal System Organization Act, art. 180) provide for participation by local residents through the Permanent Committees of the Council and in supervising the proper functioning of the public services. The Act also stipulates that the political legitimacy of mayors and town councillors shall be monitored through votes of confidence (Municipal System Organization Act, art. 68).

426. Another mechanism is the control of the municipality's property, in which the residents of the municipality may request the Council to declare void any agreement or contract concluded with regard to municipal real estate in violation of the provisions of article 109 of the Municipal System

Organization Act. Similarly, any resident may request the Public Prosecutor to intervene when municipal or district communal land or property has been improperly transferred.

427. The Act also provides for the participation of citizens and local residents in initiatives for the establishment, merger and elimination of municipalities, and the establishment of municipal districts; they may also, through their neighbourhood organizations, exercise the local legislative initiative (art. 174) and the initiative of reconsideration of ordinances (arts. 176-179).

428. The referendum is provided as a participatory element for popular control of the legislative legitimacy of town councils. A petition may be filed by 10 per cent of local residents registered with the electoral board having jurisdiction in the municipality in question. The revocation of the mayor's mandate (art. 69) is effected by the Council, which suspends the mayor and at the same time convenes a referendum to be held within 30 days at the latest, in order for the local electorate to decide whether or not the mayor's mandate shall be revoked.

429. In this way the principle of representative democracy enshrined in the Constitution is linked with the citizens' participation provided for in the Municipal System Organization Act. In both legal texts and practice, Venezuela fulfils the requirements laid down in article 25 (a) of the Covenant.

430. It should be pointed out that the Bicameral Commission of the Congress of the Republic is currently conducting a study aimed at proposing some constitutional amendments, one which would expand the referendum, one by which the Executive or Congress would submit a law for consideration by the electorate before enactment, and a third whereby a particular number of voters would be able to request a referendum before a law was promulgated. Time will tell what the final results of these proposals will be.

431. Finally, as an especially important indication of how political democracy is being extended to the country's entire institutional life, in late 1989, for the first time in Venezuela's history, gubernatorial elections were held in the 21 states, which, together with a Federal Territory and a Federal District, make up the political and administrative division of the nation. Those officials had previously been designated by the President of the Republic, for which reason governors often failed to identify fully with the region under their responsibility.

432. Similarly, in the same elections of December 1989, mayors were elected for the first time in 269 autonomous municipalities, which, together with the town councillors, also elected on that occasion (although not for the first time), represented a strengthening of local power that devolved sovereignty on the communities and initiated an irreversible process of decentralization of the central power's authority.

433. Nine of the 20 governors elected by popular suffrage are members of opposition parties or alliances, and 11 of the government party. This close correlation of 11 to 9, which is virtually the same at the local level and

which, with slight variations, is reflected in the composition of the National Congress where there are no majorities favouring a specific shade of political opinion, is indicative of Venezuela's balanced political makeup.

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors

434. Under Venezuela's Constitution suffrage is the cornerstone of the representative democratic system, and for that reason the Constitution stipulates that popular sovereignty shall be exercised through suffrage (arts. 2 and 3).

435. Title III of the Constitution, concerning duties, rights and guarantees, chapter IV, Political rights, stipulates as follows: "Article 110. Voting is a right and a public duty. Its shall be compulsory, within the limits and conditions established by law."

436. The vote has a dual character: on the one hand, it is a political right proper to the citizen, whose exercise is a public act, as it is a means of participating in the major decisions concerning the State, and on the other, as a consequence of its public status, voting is a duty and consequently mandatory.

437. Although article 25 of the Covenant describes the vote as a right, in Venezuela since the inception of democracy it has also been a duty, in order to preserve democracy and avoid abstention. This duality whereby voting is both a right and a public duty has allowed it to be made mandatory and at the same time made it possible to establish specific conditions for eligibility for office.

438. This, then, is the legal framework of suffrage in Venezuela; its characteristics pursuant to the Constitution and other legal instruments are as follows.

439. First of all, electors must be Venezuelans aged over 18 and they must not be subject to civil disability or have been deprived of their political rights (Constitution, art. 111). Foreigners may vote in mayoral and council elections, subject to the same requirements as Venezuelans and provided that they have been resident in Venezuela for over 10 years, one of which must have been spent in the municipality where the election is being held (Elections Organization Act, art. 10).

440. Secondly, the ballot is free and secret, and the right of minorities to proportional representation is enshrined in article 113 of the Constitution. This provision is developed at length in article 116 of the Elections Organization Act, paragraph 4 of which stipulates that "There shall be one or more places in the polling station ... where each elector may make his choice in secret ...". In addition, paragraph 8 stipulates that "No one may accompany the elector when he makes his choice, except as provided for by articles 124 and 125 of this Act". Moreover, article 122 of the Act stipulates that "The polling board shall instruct the elector on how to

express his vote and inform him that he is entitled to vote freely and that the secrecy of the ballot is guaranteed. The board shall interpret the secrecy of the ballot for the benefit of the voter" (emphasis added).

441. Thirdly, suffrage is universal and direct for the election of the President of the Republic, senators and deputies, members of the legislative assemblies, state governors, mayors, councillors and members of the parish councils (Constitution, arts. 19, 148, 151 and 183, Act on the Election and Dismissal of State Governors, art. 2; Municipal System Organization Act, arts. 51, 56 and 73). Universal suffrage means that when the ballot is held all those legally entitled to vote may do so; to safeguard this principle the relevant Act provides for the constitution of a permanent and public electoral register (Elections Organization Act, arts. 60 et seq.), on which all citizens entitled to vote are required to register.

442. These conditions determine what is known as the electorate, in other words all those citizens who are entitled to vote by law, as not all of them, whatever their status or condition, are allowed to vote. Pursuant to the Constitution, and as was already mentioned, the following individuals are excluded from the electorate: (1) those aged under 18; (2) those banned by a decision of the civil courts; (3) those banned on criminal grounds; and (4) aliens, except in the case of municipal elections and subject to the conditions laid down by law.

443. There are cogent reasons for these exclusions. In the case of minors, it should be noted that the State requires the electorate to be composed of individuals with sufficient intellectual capacity to grasp the importance of expressing an opinion of great significance through suffrage. For this reason the limit was set at 18 on the grounds that given the nature of Venezuelan society young people have by that age developed an awareness of their civic duties and political rights. As regards the second category, persons banned by a decision of a competent court, the same reasons apply, i.e. their incapacity to take such decisions as are required for the exercise of political rights. When individuals are banned, they lose the right to administer their property and to exercise their own rights, including the right to vote. As regards persons banned by reason of a criminal conviction and those deprived of their political rights by a decision of the criminal courts, their debarment is intended as an accessory penalty. Lastly, aliens are excluded on the grounds that the vote implies direct participation in the administration and politics of the State, and thus must only extend to those who have a direct and effective interest in proper government, in the Government representing them as well as possible and in its doing its utmost for the national community. However, although political rights are limited to Venezuelan citizens, the Constitution makes provision for aliens to take part in local administration by voting in municipal elections, provided that they meet the requirements laid down by the Elections Organization Act and the Municipal System Organization Act. It should also be emphasized that the functions of the Bicameral Commission include the extension, within precise limits, of political rights to aliens, an issue that will be discussed in depth before a formal proposal is made to determine the relevant constitutional amendment.

444. With regard to votes for women, since 1946 when the electoral statute was laid down female suffrage has been expressly recognized, and is considered

inseparable from popular sovereignty and from the principle of political and social equality; for this reason the constituent assembly felt no need specifically to mention the right, as all Venezuelans, save those specifically excluded, are electors (emphasis added).

445. As to the direct nature of suffrage, this means on the one hand that suffrage is intended directly to elect a person chosen from among the candidates, and not to elect others who will in turn act as an electoral college. The principle is also manifest in the fact that votes are cast directly without the involvement of third parties, voters cast their votes personally and only the disabled and the blind may be accompanied (Elections Organization Act, art. 116, para. 8).

446. Such are the specific features of the Venezuelan electoral system; they are guaranteed by an electoral organization capped by the Supreme Electoral Council which has overall responsibility for the organization and monitoring of elections and for the permanent electoral register and functional and administrative autonomy, and by the electoral and polling boards (Elections Organization Act, arts. 22 and 40). These bodies are composed in such a way as to ensure that no one party or political group predominates.

447. As regards the requirement laid down in article 25 (b) of the Covenant that citizens should not only have the right to vote, but also to be elected, this is also met by Venezuelan law through article 112 of the Constitution and article 11 of the Elections Organization Act, the second of which states as follows:

> "The requirements for election as President of the Republic, governor, senator and deputy to the Congress of the Republic and deputy to the legislative assemblies of the states shall be those laid down by the Constitution of the Republic. The requirements that apply to mayors and members of municipal councils shall be those laid down by the Municipal System Organization Act".

448. It can thus be seen that Venezuela complies with the requirements of article 25 (b) of the International Covenant on Civil and Political Rights.

(c) To have access, on general terms of equality, to public service in his country

449. Article 112 of the Constitution, referred to in connection with the previous topic, stipulates as follows:

> "Voters aged over 21 who are able to read and write may be elected to and are fit to hold public office, subject to no restrictions other than those established in this Constitution and those derived from the aptitude requirements that apply to specific posts, as prescribed by law" (emphasis added).

450. Pursuant to this principle, the following specific requirements apply:

(a) President of the Republic: Venezuelan by birth, aged over 30 and a layman (Constitution, art. 182);

(b) Senator: Venezuelan by birth and aged over 30 (Constitution, art. 149);

(c) Deputy: Venezuelan by birth and aged over 21 (Constitution, art. 152);

(d) State governor: Venezuelan by birth, aged over 30 and a layman (Act on the Election and Dismissal of State Governors, art. 6);

(e) Deputy to the legislative assembly: Venezuelan by birth and aged over 21 (Constitution, art. 19);

(f) Mayor: Venezuela, with not less than three years' residence in the municipality or district, as appropriate, immediately prior to standing for election (Municipal System Organization Act, art. 51);

(g) Councillor: Venezuelan, with not less than three years' residence in the municipality immediately prior to standing for election (Municipal System Organization Act, art. 56);

(h) Minister: Venezuelan by birth, aged over 30 and a layman (Constitution, art. 195);

(i) Supreme Court judge: Venezuelan by birth, aged over 30 and a lawyer; in addition to the specific requirements laid down by the relevant Organization Act (Constitution, art. 213);

(j) Attorney-General of the Republic: the same requirements apply as to Supreme Court judges (Constitution, art. 219);

(k) Controller-General of the Republic: Venezuelan by birth, aged over 30 and a layman (Constitution, art. 237);

(l) Prosecutor-General of the Republic: the same requirements apply as to Supreme Court judges (Constitution, art. 201).

451. For all other public offices it will be necessary to consult the relevant laws to determine in each case the special conditions regarding suitability and eligibility. Moreover, the Administrative Careers Act guarantees access to a career in public administration through the legal channels and career stability, for all positions except those subject to free appointment and dismissal, i.e. those classified as positions of trust. Thus, it is clear that Venezuela duly complies with the requirements of article 25 (c).

452. To conclude, as a signatory to the International Covenant on Civil and Political Rights, Venezuela's legal norms and their implementation comply with the provisions and requirements of article 25 of the Covenant.

Article 26

453. The equality of all persons before the law set forth in this article of the Covenant is fully implemented in Venezuela, and the Constitution protects this important right by stipulating in article 61:

> "Discrimination based on race, sex, creed or social condition shall not be permitted. Documents of identification for acts of civil life shall contain no mention of any kind respecting filiation. No official form of address shall be used other than "citizen" (ciudadano) and "you" (usted), except in diplomatic formulas. Titles of nobility or hereditary distinction shall not be recognized."

454. Similarly, article 8 of the Civil Code states that the authority of the law extends to all persons, whether nationals or foreigners, living in the Republic.

455. Although there are still a few provisions in existence that indicate discrimination on grounds of sex, much progress has been made in Venezuelan legislation on women's rights, which has gradually been brought into line with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women, to which Venezuela is a party.

456. In addition to the above-mentioned Convention, the Government of Venezuela has ratified other international instruments concerning prevention of discrimination, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the International Convention against Apartheid in Sports and the Convention against Discrimination in Education. Finally, Venezuela has repeatedly addressed competent international bodies on the need to conclude a convention on the elimination of all forms of intolerance and discrimination based on religion or belief.

Article 27

457. As indicated in the initial report, article 77 of the 1961 Constitution states: "The law shall establish an exceptional system required for the protection of Indian communities and their progressive incorporation into the life of the Nation". To achieve the goals of protection and incorporation, the Constitution provides for the establishment of an exceptional system.

458. A draft Act on the Organization of Indigenous Communities, Peoples and Cultures (see annex 31), prepared in order to reinforce the rights of indigenous groups, is currently under iscussion.

459. Although it is true that the Constitution sets forth provisions that are applicable to "everyone" or "every citizen", that is, to individuals and not groups, including indigenous groups, it is also true that the Constitution, on enshrining certain rights and freedoms, acknowledged diversity and differences between individuals and groups. Rules relating to indigenous peoples are currently scattered among different laws, all of which are in the same spirit as the Constitution; that is, they seek the integration and protection of indigenous people. In the case at hand, indigenous persons are granted the right to their specific features and cultural identity under the Constitution, which establishes freedom of religion and conscience. Article 65 of the Constitution stipulates: "Everyone has the right to profess his religious faith and to practise his religion privately or publicly, provided that it is

not contrary to public order or morality". Thus the right of indigenous persons to profess their own religion and to be free of any coercion or pressure to convert to another religion is established.

460. Article 194 of the Narcotics and Psychotropic Substances Act (Gaceta Oficial, No. 3,411, 17 July 1984) stipulates: "Certain small indigenous groups, clearly identified by the competent authorities, who have traditionally been consuming Yopo in magical-religious ceremonies, are excluded from the application of this Act".

461. The federal territories regime is provided for in the current Federal Territories Organization Act (Gaceta Oficial, No. 3,404, 18 June 1984; see annex 32), which, like the superseded Act of 14 September 1948, established in article 15, paragraphs 4-11, rules relating to indigenous persons in such areas as protection, and promotion of indigenous culture and well-being, and compliance with the Labour Act and its regulations. Historically, the federal territories were established in unpopulated regions or regions inhabited by indigenous peoples and were directly dependent on the Executive.

462. The treatment of indigenous persons in prison is dealt with in the Regulations Governing Persons on Remand, which are applicable to the individuals indicated in article 4 thereof. The Regulations provide for special treatment for indigenous persons: a section of the common dormitory for those with a good record (art. 66); space in the workshops to enable them to work together (art. 67); receiving of visits at different times from those of the other prisoners (art. 68); and other rules for their protection. However, the Prison System Act, applicable to persons convicted in final judgement, and its Regulations, do not provide any special treatment for indigenous persons.

463. Decree No. 252 (Gaceta Oficial, No. 23,594, 2 August 1951) provides that the Minister of Justice shall decide whether to grant permits to persons or bodies planning expeditions to areas inhabited by indigenous people. Its basic purpose was to prevent a massive inflow of foreign evangelists and to avoid exploitation of indigenous people by all kinds of adventurers; however, entry may be authorized by the governor of the State and lower-level officials such as those of the Ministry of the Environment.

464. Article 6 of the Constitution stipulates that the official language in Venezuela is Spanish; for indigenous peoples, however, the legislation applicable is Decree No. 283 (Gaceta Oficial, No. 31,825, 20 September 1979, see annex 33), which provides for the gradual introduction of bilingual education in indigenous schools.

465. Finally, special mention should be made of the Missions Act of 1915 (see annex 34), in which the State delegates to the Catholic missions the task of "subduing and civilizing" indigenous persons. Under the provisions of the Missions Act, the Government of Venezuela concludes mission agreements.

466. There are also other regulations designed to achieve environmental protection and coordinated development through provisions concerning indigenous persons, such as the Act approving the Amazon Cooperation Treaty (Gaceta Oficial, No. 31,993, 28 May 1980, see annex 35), signed by the Amazon

countries: Venezuela, Bolivia, Brazil, Colombia, Ecuador, Guyana, Suriname and Peru, under which the contracting parties agreed to conduct joint efforts and actions to promote the harmonious development of their respective territories in the Amazon, in order that such joint actions might produce equitable and mutually beneficial results, as well as lead to the preservation of the environment and the conservation and rational utilization of natural resources, and the establishment of biosphere zones in Amazonas Territory and in the State of Delta Amacuro.

467. There are, however, still some difficulties in effectively implementing the protective provisions established in the Constitution, and there have been some cases of discrimination against indigenous people as individuals and as groups.

468. The Agrarian Reform Act (see annex 36) also makes reference to indigenous communities, especially in article 162, paragraph 3, concerning land restoration, which lays down the obligation to "promote the restoration of lands, woods and waters to indigenous communities and extended families ...", and paragraph 4 concerning the property register. This obligation is repeated in article 21 of the Regulations to the Act (Gaceta Oficial, No. 1,089, 2 March 1967), which deals with the legitimization of land ownership: "The plans for legitimizing land ownership being conducted by the National Agrarian Institute shall give preference to requests from small rural producers, indigenous populations ...".

469. Article 100 of the draft Environment Act, currently being considered for approval by Congress, stipulates the following:

> "Until the Act establishing the exceptional system for indigenous communities is enacted, members of indigenous communities and ethnic groups shall be exempt from corporal punishment or fines when the events described herein occur in their traditional living places and have been conducted according to their traditional model of subsistence, occupation of space and coexistence with the ecosystem. In no case shall natural or legal persons who instigate or take advantage of the good faith of indigenous peoples to harm the environment be exempt from the application of the penalties laid down in this Act. If necessary, the judge shall take appropriate security measures to guarantee protection of the environment and the harmonious relationship of the indigenous communities to it.
>
> Sole paragraph: In all matters relating to indigenous communities and ethnic groups, the judge shall request a socio-anthropological report from the government body dealing with indigenous policy and shall take the opinion of the community or ethnic group affected into account."

470. The Bicameral Commission currently studying constitutional amendments has proposed a reformulation of article 77 of the Constitution in which its second paragraph would be replaced by one laying down the right to preservation of indigenous culture within a State that is one and indivisible but must recognize the presence of these communities within its frontiers, with their traditions, religions and languages.

Notes

1/ Eight per cent of the population old enough to read and write in 1989. See Anuario Estadístico de Venezuela - 1989, p.809, 1990.

2/ Pedro Nikken: Codigo de Derechos Humanos, Editorial Jurídica Venezolana, Caracas, 1991, pp. 39 et seq.

3/ Ibid.

4/ See decision of the Political-Administrative Division of the Supreme Court of 4 December 1990, Repertorio Jurisprudencial, Oscar R. Pierre Tapia, No. 12, 1990, pp. 55 et seq.

5/ See decision of the Supreme Court in Plenary, of 10 July 1990, Revista de Derecho Público, Editorial Jurídica Venezolana, No. 44, 1990, pp. 96 et seq.

6/ R. Allan, Brewer Cartas and Carlos M. Ayala Corao, Introducción y estudio preliminar a Ley Orgánica de Amparo Sobre Derechos y Garantías Constitucionales, Caracas, Editorial Jurídica Venezolana, 1988, p. 12.

7/ See ruling of Juvenile Court No. 2 of the State of Lara, of 15 April 1986, in El Amparo Constitucional en Venezuela, Diario de Tribunales, Barquisimeto, 1987, Tomo II, pp. 308 et seq.

8/ "We feel that questions relating to the family and to children should not be regarded as essentially legal issues. Rather, they are fundamentally educational issues in Latin America, and, if the education provided is to be effective, it needs to be addressed and guided by an interdisciplinary team that will consider the family as a whole. While it is necessary and even essential to have a jurist on the team, he should not have the exclusive and predominant role which he has at the present time." Chibly Abouhamad Hobaica, Nuevo Enfoque al Derecho de Familia.

9/ "The help of a jurist is essential but only as a contributor to the debate; this does not mean abandonment of the juridical approach, but rather the addition of a new dimension to the jurist's training, by focusing on the individual. The law must aim at providing humanistic solutions supported by the interdisciplinary contributions of other sciences". Chibly Abouhamad Hobaica, op. cit.

10/ Any arrest followed by detention must be recorded in a register.

11/ As stated by Government attorney Novena of the State of Guárico, the official responsible for the penal system, in document No. Gua-9-294 of 12 June 1990, submitted to the Inspection Directorate and enclosing copies of documents Nos. 315 and 316 of 24 May 1990 from the Second Higher Criminal Court of the State of Guárico, of documents Nos. 470-182 and 470-183 of 22 May 1990 from the First Higher Criminal Court of the State of Guárico and of document No. 911 of 5 June 1990 from the Fourth Criminal Court of First Instance of the State of Guárico.

12/ These prisoners include officers, non-commissioned officers, other ranks and civilians attached to the Army, the Navy, the Air Force and the National Guard.

LIST OF ANNEXES*

I. GENERAL

I. Constitution of the Republic of Venezuela

II. Guiding principles

III. Judicial Career Act

IV. Public Prosecutor's Department Organization Act

V. Decree No. 403 establishing the Presidential Commission for Reform of the State

VI. Partial Amendment of the Civil Code Act

VII. Organic Law of Protection (Amparo) on Constitutional Rights and Guarantees

VIII. Organic Labour Law

IX. Proposals approved in principle by the Special Bicameral Commission of the Congress of the Republic for amendment of the Constitution

X. Set of proposals for amendment of the Constitution

XI. The Defender of Human Rights

II. STUDY OF THE ARTICLES OF THE COVENANT

1. Decision of the Supreme Court, Political-Administrative Division

2. Decision of the Supreme Court in Plenary Session of 10 July 1990

3. Explanatory Memorandum and Equality of Opportunities for Women Bill

4. La Mujer en Venezuela (Women in Venezuela)

5. Decrees Nos. 49, 67 and 98 suspending and restoring constitutional guarantees. Communications Nos. 455 of 17 March 1989 and 544 of 31 March 1989 from the Ministry of Foreign Affairs

6. Decision of the Supreme Court, Political-Administrative Division, of 10 August 1989

7. Decision of the Lara State Criminal High Court of 26 September 1990

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* The annexes, as submitted in Spanish by the Government of Venezuela, may be consulted in the files of the United Nations Centre for Human Rights.

8. Explanatory Memorandum and Individual Right to Liberty Bill
9. Police Organization Bill
10. Explanatory Memorandum and National Police Career Bill
11. Explanatory Memorandum and Police Career Bill
12. Federal Police Act
13. Explanatory Memorandum and Bail With Security Bill
14. Explanatory Memorandum concerning the Judicial Pardon Bill
15. Aliens Act
16. Regulations Pertaining to the Aliens Act
17. Act Regulating the Activity of Aliens in Venezuelan Territory
18. Regulations relating to the Admission and Residence of Aliens in Venezuela
19. Data and statistics relating to the organization of the Judicial Power
20. Decision of the Supreme Court, Political-Administrative Division, of 28 February 1985
21. Explanatory Memorandum and Bill to partially amend the Code of Criminal Procedure
22. Draft Organic Law on Religious Worship
23. Decision of the Supreme Court, Political-Administrative Division, of 1 August 1991
24. Explanatory Memorandum and Demonstrations, Marches and Other Peaceful Protest Activities Bill
25. Explanatory Memorandum and Crowd Control Prohibition of the Use of Weapons Bill
26. Political Parties, Public Meetings and Gatherings Act
27. Explanatory Memorandum and Political Parties Act Partial Amendment Bill
28. Minors Protection Act and Regulations
29. Act for the Partial Reform of the Municipal System Organization Act
30. Act on the Election and Dismissal of State Governors

31. Explanatory statement and draft Act on the Organization of Indigenous Communities, Peoples and Cultures

32. Act for the Partial Reform of the Federal Territories Organization Act

33. Decree No. 283 establishing a bilingual intercultural education system in areas inhabited by indigenous persons

34. Missions Act of 16 June 1915

35. Act approving the Amazon Cooperation Treaty

36. Agrarian Reform Act
